Proceedings

24 JAN 14

OF THE

BENGAL LEGISLATIVE COUNCIL.

Index to Vol. XLIV.

JANUARY TO MARCH, 1912.

Published by authority of the Council.

CALCUTTA:

BENGAL SECRETARIAT PRESS.

1913.

BENGAL LEGISLATIVE
24 JAN 14

INDEX TO THE PROCEEDINGS

OF THE

BENGAL LEGISLATIVE COUNCIL

FOR THE YEAR 1912.

A

PAGE

ABOLITION OF THE 4TH GRADE OF THE PROVINCIAL JUDICIAL SERVICE. See *Questions*.

ABORIGINAL TRIBES OF CHOTA NAGPUR—
unsuitability of the Indian Succession Act to the. See *Questions*

ADJOURNMENT OF COUNCIL See *Council*.

AHMAD, THE HON'BLE MR. SAIYID WASI—
Asked questions regarding appointment of Biharis in the various services in the new Province 61, 62
Orissa Tenancy Bill, 1912 . 73, 74, 76, 78, 85, 86, 87, 94, 96, 123, 156, 162, 169, 173, 175, 176, 178, 180, 188, 194, 207-209, 215, 217, 220, 221, 232.

ALLEGED ARREST OF BABU BEPIN CHANDRA PAL. See *Questions*.

ALLEGED PROPOSED PARTITION OF THE DISTRICT OF MIDNAPORE. See *Questions*.

ANATOMY IN THE MEDICAL COLLEGE chair of. See *Questions*.

APCAR, THE HON'BLE MR J. G—
Orissa Tenancy Bill, 1912 . . . . . 90, 93, 137

APPOINTMENT OF A JUNIOR OFFICER AS ADDITIONAL INSPECTOR OF SCHOOLS IN THE PRESIDENCY DIVISION. See *Questions*

APPOINTMENT OF A SUB-OVERSEER IN THE DALTONGANJ MUNICIPALITY See *Questions*

APPOINTMENT OF BIHARIS IN THE VARIOUS SERVICES IN THE NEW PROVINCE. See *Questions*

ARIFF, THE HON'BLE MR. GOLAM HOSSEIN CASSIM—
Asked questions regarding cotton-gambling in Calcutta . . 23
Asked (on behalf of the Hon'ble Dr Abdullah-al-Mamun Suhrawardy) questions regarding formation of new cadres of appointments in the Indian and Provincial Services in the new Presidency of Bengal . 61
Delivered farewell speech at the last meeting of the Bengal Legislative Council under its old constitution 284

B

BASU, THE HON'BLE BABU BHUPENDRA NATH—
Asked questions regarding—
alleged arrest of Babu Bepin Chandra Pal 3
anticipated division of the cadre of the Provincial Judicial Service . . . 63
Delivered farewell speeches at the last meeting of the Bengal Legislative Council under its old constitution 287, 288
Orissa Tenancy Bill, 1912 . . . . 80, 90, 91, 96, 104-105, 107, 109-110, 113, 211-212, 213, 216, 217.

PAGE.

BASU, THE HON'BLE BABU JANAKI NATH—

Appointed Member of the Select Committee on Orissa Tenancy Bill . . . 3
Made affirmation of allegiance 3
Orissa Tenancy Bill, 1912 . . . 14-15, 48-49, 75, 93, 94, 121-122, 127, 130, 149, 196-197, 218, 219-220, 226.

BENGAL MINING SETTLEMENTS BILL, 1912. See *Bills*.

BENGAL TENANCY ACT (VIII OF 1885)—

Applications under section 158A of the See *Questions*.

BILL(S)—

BENGAL MINING SETTLEMENTS BILL, 1912—

amendments proposed and adopted 280, 282
amendments proposed and negatived 281, 282
Report of the Select Committee presented 55
Ditto ditto taken into consideration and Bill passed . . 282

CALCUTTA PORT (AMENDMENT) BILL, 1912—

introduced in Council 16
referred to Select Committee 27
Report of the Select Committee presented 35
Ditto ditto taken into consideration and Bill passed . . 35

ORISSA TENANCY BILL, 1912—

amendments proposed and adopted . 72, 124, 138, 140, 143, 144, 146, 163, 179, 180, 181, 187, 194, 217, 232, 233, 243, 260, 266, 270, 271, 280.
amendments proposed and negatived . . 70, 71, 77, 80, 82, 83, 85, 86, 99, 101, 103, 105, 106, 108, 109, 110, 111, 114, 115, 116, 117, 118, 120, 121, 123, 125, 126, 128, 129, 130, 131, 132, 137, 139, 154, 161, 169, 171, 178, 179, 180, 182, 186, 187, 189, 190, 192, 193, 215, 218, 232, 240, 242, 256, 259, 261, 262, 265, 268, 269, 270.
amendments withdrawn . . . 73, 76, 78, 82, 83, 85, 87, 96, 99, 109, 116, 119, 122, 124, 126, 129, 137, 138, 139, 140, 155, 156, 161, 163, 169, 172, 179, 180, 181, 182, 186, 187, 188, 190, 191, 192, 193, 194, 216, 216, 217, 218, 232, 233, 242, 243, 244, 259, 260, 261, 265, 266, 267, 270, 271
referred to Select Committee 13, 16
Report of the Select Committee presented 36
Ditto ditto taken into consideration . . . 64

BOMPAS, THE HON'BLE MR. C. H.—

Took oath of allegiance 58

BUDGET. See *Financial Statement*.

BURDWAN, THE HON'BLE SIR BIJAY CHAND MAHTAB, MAHARAJADHIRAJA BAHADUR OF—

Appointed Member of the Select Committee on Orissa Tenancy Bill . . 3
Delivered farewell speech at the last meeting of the Bengal Legislative Council under its old constitution 283
Orissa Tenancy Bill, 1912 . . . 12, 40, 43, 46, 47, 78, 82, 159, 162, 244, 247, 248, 259, 265, 266, 267, 271, 272, 273.

BUTLER, THE HON'BLE MR. T.—

Took oath of allegiance 173

PAGE.

C

CALCUTTA PORT (AMENDMENT) BILL, 1912. See *Bill*.

CHAPMAN, THE HON'BLE MR. E. P.—

Appointed Member of the Select Committee on Orissa Tenancy Bill . . . 3
Orissa Tenancy Bill, 1912 . . . . . 137, 154, 269, 270
Replied to questions regarding—
abolition of the 4th grade of the Provincial Judicial Service . . . 21
anticipated division of the cadre of the Provincial Judicial Service 63
increase of pay to officers of the last grade of the Provincial Judicial Service 23
location of an Additional Judge or a Subordinate Judge at Motihari . 20
location of a Subordinate Judge at Howrah 26
unsuitability of the Indian Succession Act to the aboriginal tribes of Chota Nagpur 19

CIVIL ASSISTANT SURGEONS IN THE EMPLOYMENT OF GOVERNMENT—

Grievances of See *Questions*

CODE OF CIVIL PROCEDURE—

Declaration under section 61 of the See *Questions*

COLLEGIATE SCHOOL—

New building for the Patna. See *Questions*.

COTTON-GAMBLING IN CALCUTTA See *Questions*

COUNCIL (LEGISLATIVE) OF THE LIEUTENANT-GOVERNOR OF BENGAL—

Adjournments of 16, 27, 55, 122, 197, 256, 289
Meetings of 1, 17, 29, 57, 131, 199, 256

CUMMING, THE HON'BLE MR. J. G.—

Appointed Member of the Select Committee on Orissa Tenancy Bill . 3
Bengal Mining Settlements Bill, 1912 . . . . . 55, 280, 281, 282
Orissa Tenancy Bill, 1912 . . . . . 237, 238, 241, 242, 243

D

DALTONGANJ MUNICIPALITY—

Appointment of a Sub-Overseer in the See *Questions*

DAS, THE HON'BLE MR. M. S.—

Appointed Member of the Select Committee on Orissa Tenancy Bill .
Delivered farewell speeches at the last meeting of the Bengal Legislative Council under its old constitution 287
Orissa Tenancy Bill, 1912 38—40, 41, 42, 43, 44, 51—53, 65—68, 69-70, 72, 73, 78-79, 82, 83, 84, 85, 86, 88, 93, 94, 98, 104, 108, 110, 121, 122, 127, 129, 130, 136, 156, 157, 157-158, 159, 163, 164-165, 166-168, 169, 175, 180, 181, 190, 191, 192, 193, 209-210, 226, 227, 230, 233—236, 237, 239, 241, 242, 243, 244, 247, 255-256, 260, 261, 266, 267, 268, 270, 274, 275.

DEDICATION OF FEMALE CHILDREN TO THE TEMPLE OF JAGANNATH IN PURI See *Questions*.

DEO, THE HON'BLE RAJA RAJENDRA NARAYAN BHANJA—

Appointed Member of the Select Committee on Orissa Tenancy Bill . . 3
Moved (on behalf of the Hon'ble Mr. M. S. Das) to stay proceedings regarding Orissa Tenancy Bill and subsequently withdrew it . . . 13-14, 16
Orissa Tenancy Bill, 1912 . 14—46, 73, 95, 96, 97, 99, 103-104, 105, 107, 109, 111, 119, 120, 123, 124, 126, 129, 131-132, 138, 140, 143, 155, 158, 161, 162, 163, 164, 169, 172, 178, 181, 182, 183, 186, 187, 189, 190, 191-192, 223, 233, 244, 248, 259, 260, 261, 262, 265, 271.

PAGE.

DISTRICT OF MIDNAPORE—

Alleged proposed partition of the See *Questions.*

DIVISION OF THE PROVINCIAL, JUDICIAL AND EXECUTIVE SERVICES BETWEEN THE PROVINCES OF BENGAL AND BIHAR. See *Questions.*

DIVISIONS IN COUNCIL . . . . 53-54, 70-71, 81-82, 106, 115-116, 120-121, 128, 131, 160, 161, 170-171, 177-178, 215, 231-232.

DUKE, THE HON'BLE SIR FREDERICK WILLIAM. See *President.*

DUMAYNE, THE HON'BLE SIR FREDERICK GEORGE—

Appointed Member of Select Committee on Calcutta Port (Amendment) Bill, 1912 27

Took oath of allegiance 8

DUTT, THE HON'BLE MR. K. B—

Asked questions regarding—

alleged proposed partition of the district of Midnapore . . . 24

Chair of Anatomy in the Medical College 35

grievances of Civil Assistant Surgeons in the employment of Government . 32

location of a Subordinate Judge at Howrah . . . 25

F

FAKHRUDDIN, THE HON'BLE MAULVI SAIYID MUHAMMAD—

Asked questions regarding

applications under section 158A of the Bengal Tenancy Act (VIII of 1885) . 60

appointment of Biharis in the Secretariat of the new Province . . 60

appointments in the Subordinate, Judicial and Executive Services in Bihar, Chota Nagpur and Orissa 60-61

declarations under section 64 of the Code of Civil Procedure (Act V of 1908) . 59-60

new building for the Patna Collegiate School 58

President of the Bench of Honorary Magistrates at Barh . . 59

Delivered farewell speech at the last meeting of the Bengal Legislative Council under its old constitution 286

Supported the motion to stay proceedings regarding Orissa Tenancy Bill . . 14

Orissa Tenancy Bill, 1912 . 47-48, 75, 76, 78, 80-81, 92-93, 111-112, 114-115, 116, 117, 118, 124-125, 137, 140, 142, 143, 145-146, 153-154, 184-185, 205-206, 221-222, 244, 259, 269, 276

FAREWELL SPEECHES . . . . . 283—289

FILTERED WATER—

Supply of—to the Uttarpara Municipality See *Questions*

FINANCIAL STATEMENT—

Procedure to be followed . 26, 27

FINNIMORE, THE HON'BLE MR. B. K.

Appointed Member of the Select Committee on Calcutta Port (Amendment) Bill, 1912 27

Replied to questions regarding increment of pay of clerks attached to certain offices under Public Works Department 3

G

GAMBLING—

Cotton—in Calcutta. See *Questions.*

GOSWAMI, THE HON'BLE RAJA KISHORI LAL—

Moved that the Hon'ble Mr. J. H. Kerr be added as a Member to the Select Committee on the Bengal Mining Settlements Bill, 1912 27

PAGE.

GEEE, THE HON'BLE MR R T.—

Appointed Member of the Select Committee on Calcutta Port (Amendment) Bill, 1912 27
Budget for 1912-13 . . . . . 26, 27
Moved to refer the Calcutta Port (Amendment) Bill, 1912, to Select Committee 27
Moved that the Report of the Select Committee on the Calcutta Port (Amendment) Bill, 1912, be taken into consideration 35
Moved that the Calcutta Port (Amendment) Bill, 1912, be passed . . 35
On Calcutta Port (Amendment) Bill, 1912 . . . . . 36, 36
Presented the Report of the Select Committee on the Calcutta Port (Amendment) Bill, 1912 35

GRIEVANCES OF CIVIL ASSISTANT SURGEONS IN THE EMPLOYMENT OF GOVERNMENT. See *Questions*.

H

HONORARY MAGISTRATE AT BARH—

President of the Bench of. See *Questions*

HOWRAH—

Location of a Subordinate Judge at. See *Questions*.

I

IMPROVEMENT OF THE PAY AND PROSPECTS OF THE CIVIL ASSISTANT SURGEONS IN BENGAL. See *Questions*.

INCREASE OF PAY TO OFFICERS OF THE LAST GRADE OF THE PROVINCIAL JUDICIAL SERVICE See *Questions*.

INCREMENT OF PAY OF CLERKS ATTACHED TO THE OFFICES OF THE SUPERINTENDING AND EXECUTIVE ENGINEERS, PUBLIC WORKS DEPARTMENT. See *Questions*

INDIAN SUCCESSION ACT IN CHOTA NAGPUR. See *Questions*

J

JUTE IN THE RIVERS SITUATED WITHIN THE LIMITS OF THANA JHIKARGACHA IN THE DISTRICT OF JESSORE—

Steeping of. See *Questions*

JUDICIAL AND EXECUTIVE SERVICES—

Appointments in the Subordinate—in Bihar, Chota Nagpur and Orissa. See *Questions*.

K

KEER, THE HON'BLE MR. J. H.—

Appointed Member of Select Committee on—
Bengal Mining Settlements Bill, 1912 27
Orissa Tenancy Bill 3
Orissa Tenancy Bill, 1912 . . . . . 76, 79, 80, 82-83, 84-85, 90, 95-96, 98, 100, 102-103, 106, 107, 108, 110-111, 113-114, 117, 118, 119-120, 123, 124, 125, 127, 128, 132, 153, 175-176, 188, 189, 190, 191, 192, 193, 210, 244, 24 —253, 259, 261, 268.

Replied to questions regarding—
applications under section 158A of the Bengal Tenancy Act (VIII of 1885) 60
declarations under section 61 of the Code of Civil Procedure (Act V of 1908) . 60
new building for the Patna Collegiate School 59
steeping of jute in the rivers situated within the limits of thana Jhikargacha in the district of Jessore 63
Sub-Registrars and the salaried system 23
Survey and Settlement operations in Bihar 24
*Took oath of allegiance 3

PAGE.

KHAN, THE HON'BLE KHAN BAHADUR MAULVI SARFARAZ HUSAIN—

Asked questions regarding—
improvement of the pay and prospects of Civil Assistant Surgeons in Bengal . 24
Survey and settlement operations in Bihar 24
Delivered farewell speeches at the last meeting of the Bengal Legislative Council under its old constitution 287
Orissa Tenancy Bill, 1912 . . . . 48, 75, 93, 113, 114-115, 116, 117-118, 124-125

L

LAHA, THE HON'BLE BABU HRISHIKESH—

Appointed Member of the Select Committee on—
Calcutta Port (Amendment) Bill, 1912 27
Orissa Tenancy Bill 3
Orissa Tenancy Bill, 1912 . . . 73, 82, 99, 100, 101, 109, 125, 126, 138, 142, 143, 156, 161, 162, 169-170, 171, 186, 187, 233, 237, 242, 244, 248-249, 260, 261.

LIEUTENANT-GOVERNOR OF BENGAL. See *President*.

LOCATION OF A SUBORDINATE JUDGE AT HOWRAH. See *Questions*.

LOCATION OF AN ADDITIONAL JUDGE OR A SUBORDINATE JUDGE AT MOTIHARI. See *Questions*.

M

MCLEOD, THE HON'BLE MR. NORMAN—

Appointed Member of Select Committee on Calcutta Port (Amendment) Bill, 1912 27
Delivered farewell speech at the last meeting of the Bengal Legislative Council under its old constitution 283-284

MCPHERSON, THE HON'BLE MR. H.—

Appointed Member of the Select Committee on Orissa Tenancy Bill . . . 3
Moved to refer the Orissa Tenancy Bill to Select Committee 3
Moved to take into consideration the Report of the Select Committee on Orissa Tenancy Bill, 1912 64
Orissa Tenancy Bill, 1912 . . 3—12, 36, 50-51, 64, 68-69, 70, 72, 80, 86, 87—89, 100-101, 105, 108-109, 120, 125, 126, 129-130, 134-135, 135-137, 138, 139, 140, 143—145, 150—152, 154, 156, 157, 158, 159, 162-163, 165, 166—169, 170, 171, 172, 178, 179, 180, 181, 182, 185-186, 187, 193-194, 201—203, 216, 217, 218, 227—229, 230, 232, 233, 253—255, 260, 261, 262—265, 266, 267, 268-269, 271, 278.
Took oath of allegiance 3

MADDOX, THE HON'BLE MR. S. L.—

Appointed Member of the Select Committee on Orissa Tenancy Bill 3
Orissa Tenancy Bill, 1912 . . . . 47, 137, 150, 158, 166, 207, 212, 239, 274

MAGISTRATES—
President of the Bench of Honorary. See *Questions*.

MEDICAL COLLEGE—
Chair of Anatomy in the. See *Questions*.

MEETINGS OF COUNCIL. See *Council*.

MIDNAPORE—
Alleged proposed partition of the district of. See *Questions*.

PAGE.

MOTIHARI—
Location of an Additional Judge or a Subordinate Judge at. *See Questions.*

N

NEW CADRES FOR THE NEW PRESIDENCY OF BENGAL—
Formation of. See *Questions.*

NEW SECRETARIAT AND BIHAR'S CLAIM. See *Questions.*

O

OATH OR AFFIRMATION OF ALLEGIANCE 3, 18 58, 173

OLDHAM, THE HON'BLE MR. C. E. A. W.—
Orissa Tenancy Bill, 1912 . . . . . 42, 43

ORISSA TENANCY BILL, 1912. See *Bills*

P

PAL, BABU BEPIN CHANDRA—
Alleged arrest of. See *Questions*

PATNA COLLEGIATE SCHOOL—New building for the. See *Questions*

PRASAD, THE HON'BLE BABU BRAJA KISHOR—
Asked questions regarding—
abolition of the 4th grade of the Provincial Judicial Service 21
the appointment of a Sub-Overseer in the Daltonganj Municipality . . 22
cotton-gambling in Calcutta 23
division of the Provincial, Judicial and Executive Services of Bengal and Bihar 21
location of an Additional Judge or a Subordinate Judge at Motihari . . . 20
the new Secretariat and Bihar's claim 21
the Sub-Registrars and the salaried system 22
Orissa Tenancy Bill, 1912 149-150

PRESIDENCY OF BENGAL—
Formation of the new cadres for the new. See *Questions.*

PRESIDENT, THE HON'BLE SIR FREDERICK WILLIAM DUKE—
Delivered a farewell speech at the last meeting of the Bengal Legislative Council under its old constitution 288-289
On Orissa Tenancy Bill, 1912 . . 16, 37-38, 41, 42, 43, 44, 54, 72, 78, 83, 87, 93, 94-95, 106, 107, 108, 111, 124, 137, 154, 158, 164, 169, 191, 216, 240, 247, 277, 278, 280

PROVINCIAL JUDICIAL SERVICE—
Abolition of the 4th grade of the. See *Questions.*
Anticipated division of cadres of the. See *Questions.*
Increase of pay to officers of last grade of the. See *Questions.*

PUBLIC WORKS DEPARTMENT—
Increment of pay of clerks attached to certain offices under. See *Questions.*

Q

QUESTIONS ASKED IN COUNCIL—
Abolition of the 4th grade of the Provincial Judicial Service 21
Alleged arrest of Babu Bepin Chandra Pal 31
Alleged proposed partition of the district of Midnapore 24
Anticipated division of cadre of the Provincial Judicial Service 63

PAGE.

QUESTIONS ASKED IN COUNCIL—*contd.*

Applications under section 158A of the Bengal Tenancy Act, 1885 (VIII of 1885) . 60
Appointments in the Subordinate, Judicial and Executive Services in Bihar, Chota Nagpur and Orissa 60
Appointment of a Sub-Overseer in the Daltonganj Municipality . . . 22
Ditto Biharis in the Secretariat of the new Province . . . 60
Ditto ditto various services in the new Province . . 61
Chair of Anatomy in the Medical College 35
Cotton-gambling in Calcutta 23
Declarations under section 61 of the Code of Civil Procedure (Act V of 1908) . 59
Dedication of female children to the temple of Jagannath in Puri . . . 19
Discontinuance of the practice of taking special notice of the administration of the Howrah Municipality in the Annual Resolution on the working of Municipalities in Bengal 26
Division of the Provincial, Judicial and Executive Services of Bengal and Bihar 21
Formation of new cadres for the new Presidency of Bengal 61
Government contribution towards the extension of the Howrah water-works . 25
Grievances of Civil Assistant Surgeons in the employment of Government . 32
Improvement of the pay and prospects of Civil Assistant Surgeons in Bengal . 24
Increase of pay to officers of the last grade of the Provincial Judicial Service . 23
Increment of pay of clerks attached to certain offices under Public Works Department 3
Location of an Additional Judge or a Subordinate Judge at Motihari . . 20
Ditto a Subordinate Judge at Howrah 25
New building for the Patna Collegiate School 58-59
New Secretariat and Bihar's claim 21
President of the Bench of Honorary Magistrates at Barh 59
Steeping of jute in the rivers situated within the limits of thana Jhikargacha in the district of Jessore 63
Sub-Registrars and the salaried system 22
Supply of filtered water to the Uttarpara Municipality 26
Survey and settlement operations in Bihar 24
Unsuitability of the Indian Succession Act to the aboriginal tribes of Chota Nagpur 19

R

RAY, THE HON'BLE BABU MAHENDRA NATH—
Asked questions regarding—
discontinuance of the practice of taking special notice of the administration of the Howrah Municipality in the annual resolution on the working of Municipalities in Bengal 26
Government contribution towards the extension of the Howrah water-works . 25
supply of filtered water to the Uttarpara Municipality . . 26
Orissa Tenancy Bill, 1912 . . . . . 49, 50, 222-223

RAY, THE HON'BLE RAI SITA NATH, BAHADUR—
Appointed Member of Select Committee on Calcutta Port (Amendment) Bill, 1912 27
Delivered farewell speech at last meeting of the Bengal Legislative Council under its old constitution 285, 286
Orissa Tenancy Bill, 1912 . . . . . 75, 82, 90, 150

REID, THE HON'BLE MR. D. J.—
Took oath of allegiance 13

S

SAHAY, THE HON'BLE BABU BAL KRISHNA—
Asked questions regarding—
dedication of female children to the temple of Jagannath in Puri . . . 19
increment of pay of clerks attached to certain offices under Public Works Department 3
unsuitability of the Indian Succession Act to the aboriginal tribes of Chota Nagpur 19

PAGE.

SAHAY, THE HON'BLE RAI SHEO SHANKAR BAHADUR—

Delivered farewell speech at the last meeting of the Bengal Legislative Council under its old constitution 285

Orissa Tenancy Bill, 1912 . . 73, 8[illegible], 91-92, 101-102, 122, 124, 126-127, 135-136, 137, 138, 139, 140, 141-142, 146-149, 155, 169, 171-172, 179, 181, 182, 183-184, 187, 192, 198, 194—196, 214, 215, 216, 217, 218-219, 230-231, 232, 243, 244, 259, 260, 266, 267, 271, 273, 274

SARBADHIKARI, THE HON'BLE BABU DEBA PRASAD—

Orissa Tenancy Bill, 1912 . . . . . 206-207, 224-226, 230

SECRETARIAT OF THE NEW PROVINCE—

Appointment of Biharis in the. See *Questions*

SELECT COMMITTEES ON—

Bengal Mining Settlement Bill, 1912—

Report presented 55
Do. considered 180

Calcutta Port (Amendment) Bill, 1912—

Appointed 27
Report presented 35
Do. considered 35

Orissa Tenancy Bill, 1912—

Appointed 13
Report presented 26
Do considered 64

SEN, THE HON'BLE RAI BAIKUNTHA NATH BAHADUR—

asked questions regarding—

increase of pay to officers of the last grade of the Provincial Judicial Service . 31

steeping of jute in the rivers situated within the limits of thana Jhikargacha in the district of Jessore 63

Bengal Mining Settlement Bill, 1912 . . . . . 280, 281-282
Opposed the motion to stay proceedings regarding Orissa Tenancy Bill 15-16
Orissa Tenancy Bill, 1912 . . . . . 15-16, 76, 94, 98, 100, 122, 152-153, 176, 203-204, 223 224, 276 277.

SINGH, THE HON'BLE MR DIP NARAYAN—

Orissa Tenancy Bill, 1912 . . . . . 277, 278

SINHA, THE HON'BLE BABU KIRTANAND—

delivered farewell speech at the last meeting of the Bengal Legislative Council under its old constitution 286

SINGH, THE HON'BLE KUMAR SHEO NANDAN PRASAD—

Orissa Tenancy Bill, 1912 275

SINGH, THE HON'BLE MAHARAJ-KUMAR GOPAL SARAN NARAYAN—

Orissa Tenancy Bill, 1912 47

STACKE, THE HON'BLE MR. F. A.—

Appointed Member of the Select Committee on—

Calcutta Port (Amendment) Bill, 1912 27
Orissa Tenancy Bill, 1912 3
Calcutta Port (Amendment) Bill, 1912 16

PAGE.

STEPHENSON, THE HON'BLE MR. H. L.—

Replied to questions regarding—

appointment of a Sub-Overseer in the Daltonganj Municipality 22
Chair of Anatomy in the Medical College 36
discontinuance of the practice of taking special notice of the administration of the Howrah Municipality in the Annual Resolution on the working of Municipalities in Bengal 26
Government contribution towards the extension of the Howrah water-works . 25
grievances of Civil Assistant Surgeons in the employment of Government . 33—35
improvement of the pay and prospects of the Civil Assistant Surgeons in Bengal 24
steeping of jute in the rivers situated within the limits of thana Jhikargacha in the district of Jessore 63
supply of filtered water to the Uttarpara Municipality 26

Took oath of allegiance 18

STEVENSON-MOORE, THE HON'BLE MR. C. J.—

Replied to questions regarding—

alleged arrest of Babu Bepin Chandra Pal . . . . . 31, 32.
alleged proposed partition of the district of Midnapore 25
appointment of Biharis in the Secretariat of the new Province . . 60
appointment of Biharis in the various services in the new Province . . . 62
appointments in the Subordinate, Judicial and Executive Services in Bihar, Chota Nagpur and Orissa 61
Cotton-gambling in Calcutta 23, 24
dedication of female children to the temple of Jagannath in Puri . . . 19
division of the Provincial, Judicial and Executive Services between the Provinces of Bengal and Bihar 21
formation of new cadres for the new Presidency of Bengal 61
new Secretariat and Bihar's claim 22
President of the Bench of Magistrate at Barh 59

SUB-REGISTRARS AND THE SALARIED SYSTEM. See *Questions*.

SUHRAWARDY, THE HON'BLE DR ABDULLAH-AL-MAMUN—

asked questions regarding formation of new cadres for the new Presidency of Bengal 61

SURVEY AND SETTLEMENT OPERATIONS IN BIHAR. See *Questions*.

T

TAGORE, THE HON'BLE MAHARAJA BAHADUR SIR PRODYOT KUMAR—

Delivered farewell speech at the last meeting of the Bengal Legislative Council under its old constitution 284

TEMPLE OF JAGANNATH IN PURI—

dedication of female children to the. See *Questions*.

U

UNSUITABILITY OF THE INDIAN SUCCESSION ACT TO THE ABORIGINAL TRIBES OF CHOTA NAGPUR. See *Questions*.

UTTARPARA MUNICIPALITY—

Supply of filtered water to the. See *Questions*.

PAGE.

W

WATER-WORKS—

Government contribution towards the extension of the Howrah See *Questions*.

WHITE, THE HON'BLE MR. C. A.—

Appointed Member of Select Committee on Calcutta Port (Amendment) Bill, 1912 27

Took oath or affirmation of allegiance 3

Z

ZAHIRUDDIN, THE HON'BLE MAULVI SAIYID—

Appointed Member of the Select Committee on Orissa Tenancy Bill . . 3

B. S. Press—18-3-1913—3680J—25—B. B S.

Abstract of the Proceedings of the Bengal Legislative Council assembled under the provisions of the Indian Councils Acts, 1861, 1892 and 1909.

THE Council met in the Durbar Hall at Belvedere on Tuesday, the 9th January, 1912, at 11 A.M.

Present:

The Hon'ble SIR FREDERICK WILLIAM DUKE, K.C.I.E., C.S.I., Lieutenant-Governor of Bengal, sub. *pro tem.*, *presiding*.

The Hon'ble MR. F. A. SLACKE, C.S.I., *Vice-President*.

The Hon'ble RAJA KISORI LAL GOSWAMI.

The Hon'ble MR. R. T. GRIFFE, C.S.I.

The Hon'ble MR. D. J. MACPHERSON, C.I.E.

The Hon'ble MR. E. W. COLLIN.

The Hon'ble MR. C. J. STEVENSON-MOORE, C.V.O.

The Hon'ble MR. J. H. E. GARRETT.

The Hon'ble MR. E. P. CHAPMAN.

The Hon'ble MR. H. WHELLER, C.I.E.

The Hon'ble MR. B. K. FINNIMORE.

The Hon'ble MR. C. A. WHITE.

The Hon'ble MR. J. H. KERR, C.I.E.

The Hon'ble MR. S. L. MADDOX, C.S.I.

The Hon'ble MR. G. W. KÜCHLER, C.I.E.

The Hon'ble MR. L. F. MORSHEAD.

The Hon'ble MR. J. G. CUMMING, C.I.E.

The Hon'ble MR. C. E. A. W. OLDHAM.

The Hon'ble MR. H. MCPHERSON.

The Hon'ble MAHARAJA BAHADUR SIR PRODYOT KUMAR TAGORE, KT.

The Hon'ble SIR FREDERICK GEORGE DUMAYNE, KT.

The Hon'ble KUMAR SHEO NANDAN PRASAD SINGH.

The Hon'ble BABU BHUPENDRA NATH BASU.

The Hon'ble RAI SITANATH RAY BAHADUR.

The Hon'ble BABU JANAKI NATH BOSE.

The Hon'ble SIR BIJAY CHAND MAHTAB, K.C.S.I., K.C.I.E., I.O.M., Maharajadhiraja Bahadur of Burdwan.

The Hon'ble MAHARAJA MANINDRA CHANDRA NANDI.

The Hon'ble MAHARAJ-KUMAR GOPAL SARAN NARAYAN SINGH.

The Hon'ble BABU KIRTANAND SINHA.

The Hon'ble RAJA RAJENDRA NARAYAN BHANJA DEO.

The Hon'ble BABU DEBA PRASAD SARBADHIKARI.

The Hon'ble MR. J. G. APCAR.

The Hon'ble MR. NORMAN MCLEOD.

The Hon'ble MR. F. H. STEWART, C.I.E.

The Hon'ble MR. W. J. BRADSHAW.

The Hon'ble MR. GOLAM HOSSEIN CASSIM ARIFF.

The Hon'ble DR. ABDULLAH-AL-MAMUN SUHRAWARDY.

The Hon'ble MR. SAIYID WASI AHMAD.

The Hon'ble MAULVI SAIYID MUHAMMAD FAKHR-UD-DIN.

The Hon'ble BABU HRISHIKESH LAHA.

The Hon'ble MAULVI SAIYID ZAHIR-UD-DIN.

The Hon'ble RAI SHEO SHANKAR SAHAY BAHADUR.

The Hon'ble RAI BAIKUNTHA NATH SEN BAHADUR.

The Hon'ble BABU MAHENDRA NATH RAY.

The Hon'ble KHAN BAHADUR MAULVI SARFARAZ HUSAIN KHAN.

The Hon'ble BABU BRAJ KISHOR PRASAD.

The Hon'ble MR. DIP NARAYAN SINGH.

The Hon'ble BABU BAL KRISHNA SAHAY.

Questions and Answers.

The Orissa Tenancy Bill, 1911.

[*Babu Bal Krishna Sahay; Mr. Finnimore; Mr. H. McPherson.*]

OATH OR AFFIRMATION OF ALLEGIANCE.

The Hon'ble Mr. White, the Hon'ble Mr. Kerr, the Hon'ble Mr. H. McPherson, the Hon'ble Sir Frederick Dumayne and the Hon'ble Babu Janaki Nath Bose made the prescribed oath or affirmation of their allegiance to the Crown.

QUESTIONS AND ANSWERS.

INCREMENT OF PAY OF CLERKS ATTACHED TO THE OFFICES OF THE SUPERINTENDING AND EXECUTIVE ENGINEERS, PUBLIC WORKS DEPARTMENT.

The Hon'ble BABU BAL KRISHNA SAHAY asked:—

(*a*) Has the attention of Government been drawn to a paragraph published in the *Bengalee* of Calcutta, dated 29th June, 1911, headed "An appeal to His Honour," regarding the question of increment of pay and prospects of the clerks attached to the offices of the Superintending and Executive Engineers under the Public Works Department?

(*b*) Will the Government be pleased to state whether there is any proposal under consideration for any increment of pay to those clerks?

The Hon'ble MR. FINNIMORE replied:—

(*a*) The letter referred to appeared in the *Bengalee* of July 29th, 1911, and not in the issue of June 29th.

It was noticed by Government.

(*b*) In March last a Committee was appointed to consider the question of the pay and grading of the clerks and draftsmen in the Public Works Department offices in Bengal. The report of that Committee has been received and is now under the consideration of Government.

THE ORISSA TENANCY BILL, 1911.

The Hon'ble Mr. H. McPherson moved that the Bill to amend and consolidate certain enactments relating to the law of landlord and tenant in the districts of Cuttack, Puri and Balasore, in the Orissa Division, be referred to a Select Committee consisting of the Hon'ble Mr. Slacke, the Hon'ble Mr. Chapman, the Hon'ble Mr. Kerr, the Hon'ble Mr. Maddox, the Hon'ble Mr. Cumming, the Hon'ble Sir Bijay Chand Mahtab, Maharajadhiraja Bahadur of Burdwan, the Hon'ble Mr. Das, the Hon'ble Raja Rajendra Narayan Bhanja Deo, the Hon'ble Maulvi Saiyid Zahir-ud-din, the Hon'ble Babu Janaki Nath Bose, the Hon'ble Babu Hrishikesh Laha and the Mover, with instructions to report after one month.

He said:—

"With your leave, Sir, I beg to move that the Orissa Tenancy Bill be referred to a Select Committee with instructions to report after one month.

"An account of the history of the Bill and of the purposes which it is designed to serve will be found in the Statement of Objects and Reasons annexed to the Bill, but I should like to take this opportunity of explaining briefly the principal features of this important measure, and the circumstances which attended its birth, to those Members of the Council who are not acquainted with the agrarian conditions of Orissa or are not conversant with tenancy legislation and have not yet had time to make a study of the printed statement. Before applying myself to the task, I would ask Hon'ble Members to extend their indulgence to me, as I am one of the latest recruits to the Council and have had no opportunity of familiarising myself with its procedure, before placing before it a subject of such magnitude and difficulty as a

complete Code of Tenancy Law must always be. From this point of view, it is to me a cause of congratulation that the Bill is not likely to be a contentious one. There may be differences of opinion regarding the details of its provisions, but, on the whole, the main principles of the Bill are likely to commend themselves to all sections of the community as they are conceived in the common interest of all.

"It was my intention from the first to explain why this measure, which will affect no portion of re-united Bengal but will be limited in its application to an integral portion of the new province of Bihar, Orissa and Chota Nagpur should be placed before the present Council and not deferred till it can be dealt with by the legislature of the new province. The explanation has become all the more necessary in view of the motion for postponement of which notice has been given by the Hon'ble Mr. Das. I can assure Hon'ble Members that, in deciding to take up the Bill in the present session, Government has no desire to rush the Council. There is a very simple and natural explanation. The Orissa Tenancy Bill is the fruit of many long years of consideration devoted to the subject by the present Government of Bengal. We have in our midst many who have taken a prominent part in these deliberations. No one, Sir, is better acquainted with Orissa than you yourself are, for you have spent several years of your life in that Division. A reference to the printed papers circulated with the Bill will show how much it owes to the labours of my Hon'ble friend, Mr. Maddox, who moreover enjoys the exceptional advantage of being the officer by whom the last Revenue Settlement of Orissa was made. We have also with us a foremost zamindar of Bengal, my Hon'ble friend, the Maharajdhiraja Bahadur of Burdwan, who owns, in addition to his Bengal estates, important landed interests in Orissa. It will be a considerable misfortune if the Bill should fail to profit by the help and advice of all these and of others on the Council, acquainted with Orissa, whose destinies may not include a seat in the Legislative Chamber of the Western province. Nor can it be represented that Orissa has been taken unawares and had this legislation thrust upon it with undue haste. The opinions of a very representative Committee were consulted in 1909 before the Bill was drafted. Since it was introduced in July last, it has been freely circulated, and a mass of valuable opinion has been collected from local bodies and officers, all of which will be duly considered in Select Committee. Orissa will also be strongly represented on the Select Committee. To postpone the Bill now will merely be to delay for a year or two the completion of a piece of business which is already ripe for disposal. Under these circumstances, it is the Council's duty, I submit, not to leave this Bill as a legacy of trouble to the builders of the new province, but to apply itself earnestly to the task of shaping the Bill, so that it may well form a parting gift from old Bengal

"I hope that the Hon'ble Mr. Das whose absence to-day I much regret, will accept this explanation when he is made acquainted with it. I also hope that he and others, who may have been inclined to think with him, will give us their help and co-operation in working out a new agrarian code for Orissa.

"With these remarks by way of preface I will now endeavour to explain the Bill to the Council as briefly as is consistent with the importance of the subject.

"Fifty years ago there was one uniform rent law, Act X of 1859, for the whole of Bengal, with the sole exception of the Sonthal Parganas. Even there, Act X of 1859 was applied by mistake for ten years till it brought the district to the brink of rebellion, and the situation was only saved by the passing of a special Settlement Regulation in 1872. Act X of 1859 was found to be equally ill-suited to the agrarian conditions of the Chota Nagpur Division, and, save in the Manbhum district, it was superseded there for nearly thirty years by Act I of 1879. It is less than four years since the Council had before it the agrarian law of Chota Nagpur, and conferred upon that Division a complete code, Bengal Act VI of 1908, which a year later was extended to the previously excepted district of Manbhum. Bengal proper, Bihar and Orissa

[*Mr. H. McPherson.*]

remained under the governance of Act X of 1859, till 1885, when the Bengal Tenancy Act was passed, and the two former areas received the benefit of a complete and self contained agrarian code. Orissa alone remained subject to the obsolete and inadequate provisions of Act X of 1859, but power had been taken in the Bengal Tenancy Act to extend its provisions in whole or part to the Orissa districts, and as soon as the last Revenue Settlement came on the horizon, it was found necessary to supplement Act X of 1859 by the extension to Orissa of various sections of the Bengal Tenancy Act. An account of the various instalments of extension will be found in paragraphs 2 to 5 of Mr. Maddox's Report, dated the 6th April 1909, of which copies have been placed in the hands of Hon'ble Members. At the close of the Revenue Settlement Mr. Maddox proposed the extension, to Orissa, of a large number of additional sections. The Board of Revenue went further and proposed the extension of the whole Act, but there was a difference of opinion regarding the wisdom of this step, and eventually the question was hung up pending settlement of the policy to be followed in the matter of maintenance of records. Save for the subsequent extension of a few scattered sections, the situation has remained stationary since 1901. Much difficulty has been experienced by the local officers in using the present double-barrelled weapon, composed partly of Act X of 1859 and partly of the Bengal Tenancy Act, and there has been much friction in the adjustment of its mechanism, but it is doubtful whether the trouble would have come to a head as early as it did, had it not been for the maintenance question.

VIII of 1885

VIII of 1885

VIII of 1885

"The Bill indeed may be regarded as one of the chief fruits of the Orissa Revision Settlement which is still in progress but is nearing completion. The revision operations were begun in 1906 under the orders of the Government of India, to pave the way for that continuous maintenance of settlement records which has been the policy of Government in other parts of India, and which, it was thought, might be fittingly extended to the temporarily-settled districts of Orissa, and prove an example for the rest of Bengal to imitate. The operations had not been long in progress before they brought to light numerous disputes and disagreements between landlord and tenant, for which it was difficult, if not impossible, to find a remedy in the agrarian law of Orissa as it now stands. I was one of those who in the beginning thought that a partial, if not complete, solution might be found for these difficulties in the extension, to Orissa, of a further instalment of the Bengal Tenancy Act. It was, however, decided by the Local Government that fuller inquiry was necessary, and Mr. Maddox was accordingly deputed to study the whole subject comprehensively on the spot. The result of Mr. Maddox's labours, which extended over a period of six months and included consultation with the local officers, with the officers of the Revision Settlement and with the non-official representatives of numerous local interests, will be found in his letter of 6th April 1909, to which I have already alluded. The report of Mr. Maddox convinced Government, and must convince everyone who gives the subject his study, that no final solution for the difficulties of Orissa can be found in the extension to it of further instalments of the Bengal Tenancy Act, and that, to place the relations between landlord and tenant in that Division on a stable and satisfactory basis, the enactment of a self-contained agrarian code is a *sine qua non*.

VIII of 18

"Surprise may be felt that it should not be possible to find salvation for Orissa in a Tenancy Act which was devised after years of deliberation and has proved sufficient for the great congeries of varying races included within the boundaries of Bengal. The reason is that, although power was taken in the Bengal Tenancy Act to extend its provisions to Orissa, the needs of Bihar and of Lower Bengal were alone considered in framing that enactment. The peculiar conditions of Orissa were not taken into account.

VIII of 18

"In the fiscal and agrarian history of Bengal, Orissa occupies a unique place, having features essentially different from those which distinguish the rest of the province. It did not come within the pale of British administration till its conquest from the Mahrattas in 1803, that is, forty years after the Diwani grant which brought Bengal and Bihar within

the boundaries of the Empire. During these forty years and for ten years earlier it had been the prey of Mahratta misrule. For the previous century and a half it was a separate province of the Mogul Empire. Long before the Moguls came, it had evolved its own revenue system under the sway of its indigenous Hindu Rajas. The changes which were grafted on the old Hindu system, first by the Moguls and then by the Mahrattas, produced conditions which were without parallel in Bengal. When Orissa was first taken over by British administrators it was their intention to extend to Orissa the indulgence of a permanent settlement, as soon as the province had recovered from the effects of Mahratta misrule; but when the time was ripe to carry out this intention, the Court of Directors had begun to realize that permanent settlement was a policy of doubtful expediency, and the settlement that was finally concluded in 1837 was therefore made for a term of thirty years only. On account of the great calamity of the Orissa famine in 1866, the settlement was extended for a further period of thirty years and continued in force till it was revised less than 15 years ago by Mr. Maddox. Such is briefly the history of the one greatest and most essential difference between Orissa and the rest of Bengal. Bihar and Bengal proper are permanently-settled. Orissa is temporarily-settled. We are not here to-day to discuss the wisdom of the policy which dictated the difference. What we have to recognise is that the difference exists, and that it has profoundly affected the agrarian conditions of Orissa. Temporary settlement necessarily involves closer contact between the administration and the agricultural population than is possible, or at least essential, in a permanently-settled area, and, in the case of Orissa, this is strikingly illustrated by one incident which distinguishes it from the rest of Bengal. I refer to the fact that, since British administration in Orissa began, the trial of rent suits has been retained in the hands of its revenue staff and has not been made over to the ordinary Civil Courts as has been done in the permanently-settled portions of Bengal. It is the existence of this very distinction that has always proved an insurmountable impediment to the extension of the Bengal Tenancy Act *en bloc* to Orissa, for that important portion of the Act which deals with judicial procedure is based on the assumption that rent suits are tried by the Civil Courts, and it has therefore always been impossible, without legislation, to extend to Orissa the procedure portions of the Act.

VIII of 1885.

"It is proposed in the present Bill to adhere to the system whereby rent suits in Orissa are tried by the Revenue Courts. A full discussion of the subject will be found in paragraphs 14 and 15 of Mr Maddox's Report of 1909. The arguments for retention may briefly be summarized as follows. The people of Orissa are accustomed to, and well satisfied with, the present system. The trial of their rent suits is attended with less expense and less delay than ordinarily occur in the Civil Courts. As Orissa is fully provided with a settlement record, the issues in rent suits are exceedingly simple and do not require for their trial any profound knowledge of civil law. Revenue officers have also the advantage that they are more familiar with the form and contents of settlement records than Civil Courts usually are. It is, moreover, essential to the administration of a temporarily settled district that the Collector would be kept in intimate touch with landlords and tenants of all classes and degrees. This advantage is secured by the present system, for the District officer is the head of the Revenue staff which hears rent suits. I am far from saying that temporarily-settled districts are alone in their need for intimate contact between the people and their administrators, but whereas in the one case it is desirable, in the other it is essential. These arguments appear to Government to be conclusive.

"Save in this important particular the judicial procedure sections of the Bengal Tenancy Act have been adopted in the Bill. They will simplify the disposal of rent suits and remove the many difficulties and anomalies that have been produced by the joint application of Act X of 1859 and portions of the Bengal Tenancy Act.

VIII of 1885.

VIII of 1885.

"Closely allied to the subject of rent suits is the law of distraint. Distraint is allowed in Bengal only through the medium of the Civil Court.

[*Mr. H. McPherson.*]

In Orissa landlords have always exercised the right of private distraint under Act X of 1859. The system has worked all these years without any serious or general abuse. It has been retained in the Bill as it facilitates the collection of rent, and it is recognised that temporarily-settled zamindars need more assistance for rent recovery than their permanently-settled brethren of Bengal who have a much larger margin of profit.

"The temporary character of its land-revenue settlement accounts for another important feature of the Bill, namely, the special place assigned in it to the class described as sub-proprietors. The Revenue officers of Orissa, who made its settlements, found, subordinate to its zamindars, a large class possessed of quasi-proprietary rights. They have always dealt in a semi-direct fashion with this important class which includes *sikhmi zamindars*, *padhans*, *mukadams*, *sarbarakhars* and others. A full description of these proprietary tenure-holders will be found at pages 186 to 195 of Mr. Maddox's Orissa Settlement Report. Government has always recognised their independent right to the settlement of land-revenue for their tenures and to *malikana* on refusal to engage. They are thus something much superior to the ordinary tenure-holder of the Bengal Tenancy Act. Special provisions for the definition and protection of their rights have been included in the present Bill. VIII of 1885.

"There is another very large and important class of Orissa land-holders called *hajiaftdars*, who own about one-sixth of the total cultivated area. The *hajiaftdars* are the owners of the invalid revenue-free tenures which were resumed in the earlier settlements. They owe their numbers and their present position partly to the special provisions of the Cuttack Land Revenue Regulation 1805 (XII of 1805), which created them, and partly to their peculiar treatment in the Revenue Settlements of Orissa. Their interests also are of a semi-proprietary nature, and it is a genuine grievance with them that, under the influence of Bengal ideas, their status has been gradually obscured, and they run the risk of being treated as ordinary tenants of the zamindars. The Bill contains special provisions for the preservation of their rights.

"There is yet another important feature of the Bill for which the justification rests in the temporary nature of Orissa's land revenue settlement. I refer to the measures that have been proposed for the definition of the privileged or private lands of proprietors and sub-proprietors. In the revenue history and tenancy legislation of Bengal, a sharp distinction has always been drawn between the demesne lands of proprietors which are cultivated by their own labour or at their own expense, and the ordinary stock of village land which is cultivated by the raiyats and is necessary for their subsistence. Within certain limits, which are defined in section 116 of the Bengal Tenancy Act, the proprietor may do what he pleases with his private land. He may cultivate it himself or through his servants or hired labourers, or he may let it out on a rack-rent of cash or kind for defined terms. Over the rest of the village area the raiyats have a right of cultivation on the payment of a fair and equitable rent, not an economic rent or a rack-rent, but such a rent as is compatible with a fair measure of agricultural prosperity. Lands belonging to the latter category may, by surrender or purchase, pass into the hands of proprietors and may be retained by them for their own cultivation; but if they are let out to village raiyats they revert to the ordinary raiyati stock; occupancy-rights begin to accrue over them, and the rent, even if an economic or competition rent at the outset, ceases in time to be so, for it comes under the limitations provided in the Tenancy Act. In Bengal proper and Bihar the area of landlord's privileged land is comparatively inconsiderable, and this is as it should be, for the effect of the permanent settlement has been to secure to zamindars the bulk of the raiyati assets of the province. Whereas at the time of the permanent settlement Government took 90 per cent. of the assets and left the zamindars only 10 per cent., these proportions have now been generally reversed, and the proprietary body absorbs more nearly 90 per cent. than 10 per cent. of the now existing assets. VIII of 1885

"In Orissa, on the other hand, the zamindars were allowed about 30 per cent. of the assets in the first temporary settlements, and their share was

the boundaries of the Empire. During these forty years and for ten years earlier it had been the prey of Mahratta misrule. For the previous century and a half it was a separate province of the Mogul Empire. Long before the Moguls came, it had evolved its own revenue system under the sway of its indigenous Hindu Rajas The changes which were grafted on the old Hindu system, first by the Moguls and then by the Mahrattas, produced conditions which were without parallel in Bengal. When Orissa was first taken over by British administrators it was their intention to extend to Orissa the indulgence of a permanent settlement, as soon as the province had recovered from the effects of Mahratta misrule; but when the time was ripe to carry out this intention, the Court of Directors had begun to realize that permanent settlement was a policy of doubtful expediency, and the settlement that was finally concluded in 1837 was therefore made for a term of thirty years only On account of the great calamity of the Orissa famine in 1866, the settlement was extended for a further period of thirty years and continued in force till it was revised less than 15 years ago by Mr. Maddox Such is briefly the history of the one greatest and most essential difference between Orissa and the rest of Bengal Bihar and Bengal proper are permanently-settled. Orissa is temporarily-settled. We are not here to-day to discuss the wisdom of the policy which dictated the difference. What we have to recognise is that the difference exists, and that it has profoundly affected the agrarian conditions of Orissa. Temporary settlement necessarily involves closer contact between the administration and the agricultural population than is possible, or at least essential, in a permanently-settled area, and, in the case of Orissa, this is strikingly illustrated by one incident which distinguishes it from the rest of Bengal. I refer to the fact that, since British administration in Orissa began, the trial of rent suits has been retained in the hands of its revenue staff and has not been made over to the ordinary Civil Courts as has been done in the permanently-settled portions of Bengal. It is the existence of this very distinction that has always proved an insurmountable impediment to the extension of the Bengal Tenancy Act *en bloc* to Orissa, for that important portion of the Act which deals with judicial procedure is based on the assumption that rent suits are tried by the Civil Courts, and it has therefore always been impossible, without legislation, to extend to Orissa the procedure portions of the Act.

VIII of 1885.

"It is proposed in the present Bill to adhere to the system whereby rent suits in Orissa are tried by the Revenue Courts. A full discussion of the subject will be found in paragraphs 14 and 15 of Mr. Maddox's Report of 1909. The arguments for retention may briefly be summarized as follows. The people of Orissa are accustomed to, and well satisfied with, the present system. The trial of their rent suits is attended with less expense and less delay than ordinarily occur in the Civil Courts. As Orissa is fully provided with a settlement record, the issues in rent suits are exceedingly simple and do not require for their trial any profound knowledge of civil law. Revenue officers have also the advantage that they are more familiar with the form and contents of settlement records than Civil Courts usually are. It is, moreover, essential to the administration of a temporarily settled district that the Collector would be kept in intimate touch with landlords and tenants of all classes and degrees This advantage is secured by the present system, for the District officer is the head of the Revenue staff which hears rent suits I am far from saying that temporarily-settled districts are alone in their need for intimate contact between the people and their administrators, but whereas in the one case it is desirable, in the other it is essential. These arguments appear to Government to be conclusive.

"Save in this important particular the judicial procedure sections of the Bengal Tenancy Act have been adopted in the Bill They will simplify the disposal of rent suits and remove the many difficulties and anomalies that have been produced by the joint application of Act X of 1859 and portions of the Bengal Tenancy Act.

VIII of 1885.

VIII of 1885.

"Closely allied to the subject of rent suits is the law of distraint. Distraint is allowed in Bengal only through the medium of the Civil Court.

[*Mr. H. McPherson.*]

In Orissa landlords have always exercised the right of private distraint under Act X of 1859. The system has worked all these years without any serious or general abuse. It has been retained in the Bill as it facilitates the collection of rent, and it is recognised that temporarily-settled zamindars need more assistance for rent recovery than their permanently-settled brethren of Bengal who have a much larger margin of profit.

"The temporary character of its land-revenue settlement accounts for another important feature of the Bill, namely, the special place assigned in it to the class described as sub-proprietors. The Revenue officers of Orissa, who made its settlements, found, subordinate to its zamindars, a large class possessed of quasi-proprietary rights. They have always dealt in a semi-direct fashion with this important class which includes *sikhmi zamindars*, *padhans*, *mukadams*, *sarbarakhars* and others. A full description of these proprietary tenure-holders will be found at pages 186 to 195 of Mr. Maddox's Orissa Settlement Report. Government has always recognised their independent right to the settlement of land-revenue for their tenures and to *malikana* on refusal to engage. They are thus something much superior to the ordinary tenure-holder of the Bengal Tenancy Act. Special provisions for the definition and protection of their rights have been included in the present Bill. VIII of 1885.

"There is another very large and important class of Orissa land-holders called *bajiaftdars*, who own about one-sixth of the total cultivated area. The *bajiaftdars* are the owners of the invalid revenue-free tenures which were resumed in the earlier settlements. They owe their numbers and their present position partly to the special provisions of the Cuttack Land Revenue Regulation 1805 (XII of 1805), which created them, and partly to their peculiar treatment in the Revenue Settlements of Orissa. Their interests also are of a semi-proprietary nature, and it is a genuine grievance with them that, under the influence of Bengal ideas, their status has been gradually obscured, and they run the risk of being treated as ordinary tenants of the zamindars. The Bill contains special provisions for the preservation of their rights.

"There is yet another important feature of the Bill for which the justification rests in the temporary nature of Orissa's land revenue settlement. I refer to the measures that have been proposed for the definition of the privileged or private lands of proprietors and sub-proprietors. In the revenue history and tenancy legislation of Bengal, a sharp distinction has always been drawn between the demesne lands of proprietors which are cultivated by their own labour or at their own expense, and the ordinary stock of village land which is cultivated by the raiyats and is necessary for their subsistence. Within certain limits, which are defined in section 116 of the Bengal Tenancy Act, the proprietor may do what he pleases with his private land. He may cultivate it himself or through his servants or hired labourers, or he may let it out on a rack-rent of cash or kind for defined terms. Over the rest of the village area the raiyats have a right of cultivation on the payment of a fair and equitable rent, not an economic rent or a rack-rent, but such a rent as is compatible with a fair measure of agricultural prosperity. Lands belonging to the latter category may, by surrender or purchase, pass into the hands of proprietors and may be retained by them for their own cultivation; but if they are let out to village raiyats they revert to the ordinary raiyati stock; occupancy-rights begin to accrue over them, and the rent, even if an economic or competition rent at the outset, ceases in time to be so, for it comes under the limitations provided in the Tenancy Act. In Bengal proper and Bihar the area of landlord's privileged land is comparatively inconsiderable, and this is as it should be, for the effect of the permanent settlement has been to secure to zamindars the bulk of the raiyati assets of the province. Whereas at the time of the permanent settlement Government took 90 per cent. of the assets and left the zamindars only 10 per cent., these proportions have now been generally reversed, and the proprietary body absorbs more nearly 90 per cent. than 10 per cent. of the now existing assets. VIII of 1885

"In Orissa, on the other hand, the zamindars were allowed about 30 per cent. of the assets in the first temporary settlements, and their share was

increased in the latest to an average of about 45 per cent. They have a much smaller margin of profit than the Bengal land-owner—Government expects from them a punctual discharge of their dues—and for these reasons they have been deemed entitled to more considerate treatment in the matter of their privileged lands. At the last Settlement, the lands in their cultivating possession were divided into two categories. The first, called *nij-jote* or privileged, embraced the lands which had come down to them as demesne lands from the previous Settlement, and such other lands as by the custom of the country had a right to be placed on the same footing. The second, called *nij-chas* or non-privileged, included all lands which did not fall under the first category, such as lands which had been abandoned by raiyats in the great Orissa famine of 1866, or had been acquired by purchase from raiyats. As there is no provision in the Bengal Tenancy Act securing the privilege of private lands for tenure-holders, through its influence the distinction between *nij-jote* and *nij-chas* was not drawn in the case of lands held by the proprietary tenure-holders of Orissa now defined as sub-proprietors. All their lands were classed as *nij chas*. The total area in the immediate possession of proprietors and sub-proprietors has increased from 88,700 acres in the 1837 Settlement to 172,500 acres in the last Revenue Settlement, and 177,500 acres in the Revision Settlement. These figures show that, whatever may have been the provisions of the law on the subject, the proprietors and sub-proprietors of Orissa have been able to maintain direct control over an increasing share of the cultivated area, whether it be classed as *nij-jote* or *nij-chas*. The distinction, however, is a perennial source of dispute and the cause of bitterness between landlord and tenant. The proprietary classes cannot themselves cultivate all the land that is recorded as theirs, and their arrangements for its cultivation through raiyats are hampered by the provisions of the present law on the subject. Government has decided to be generous to the landlords and to make over to them as *nij-jote* or privileged all that portion of the *nij chas* of the last Revenue Settlement which they still retain in their possession, as evidenced by the records of the Revision Settlement, and this concession is proposed to be extended to sub-proprietors as well as to proprietors. From figures compiled by the Settlement Officer of Orissa, I conclude that the proposed concession will mean the transfer of about one lakh of acres from the non-privileged to the privileged area. The privileged area will then be about one-twelfth of the total cultivated area of the temporarily-settled estates. Over this large area the landlords will have complete freedom of cultivation and contract. No future addition to the privileged stock will be possible, and the rest of the cultivated area which may now be in the possession of raiyats or may come into their possession will be available for their enjoyment on payment of a fair and equitable rent. The concession will, of course, be limited to temporarily-settled estates and will form no precedent for permanently-settled Bengal.

"It may be asked whether this generous concession to the landowners of Orissa is not too generous, whether it is not generosity displayed at the expense of the peasantry of the Division. I do not think that it will materially affect the welfare of the raiyats. In practice they get little out of the *nij chas* or non-privileged lands, because the provisions of the law are ignored. We shall merely be giving legal sanction to the continuance of existing usages which, as the law stands, are illegal. The chief value of the change, in fact, will be that it will remove a fertile cause of dispute and strife.

"The Bill proposes to give some return to the raiyats for this concession, by two of its provisions. The first is contained in clause 241 which corresponds to section 178 of the Bengal Tenancy Act and bars contracts in violation or diminution of the rights secured to raiyats by other provisions of the law. The second is contained in clause 148 of Chapter XII which is modelled on section 64, sub-section (3) of the Chota Nagpur Tenancy Act 1908, and saves the raiyat from ejectment when he has been in occupation of newly-reclaimed land, with or without his landlord's consent, for more than two years.

Vill of 1885.

"In my opinion, this return cannot be described as great, because, whatever may have been the law, in practice the Orissa raiyat has suffered little in the

[*Mr. H. McPherson.*]

past from contracts in bar or diminution of his ordinary rights (I have heard of none such prior to 1906), and he has always enjoyed the privilege of retaining, at a fair assessment, lands that he has reclaimed. It is desirable, however, that these two matters should be placed on a clear and stable footing for the future.

"There is another incident in their relations with their landlords to which the raiyats attach much greater importance, and in respect of which they would consider it a real boon to have their position defined more clearly than it is at present. I refer to the right of transfer. The Bill leaves transfers of raiyati holdings to be regulated by local custom or usage under clause 246. Now the general custom in Orissa is for transfers to be recognised by landlords on receipt from the transferees of a sum equal to one-fourth of the consideration money stated in the deed of transfer, and this general custom applies equally to transfers of entire holdings and transfers of part holdings. There is, however, no rule of law on the subject, and there are exceptional landlords of a grasping disposition who take advantage of this to demand much more than 25 per cent. as the price of their consent. The right of veto in these cases acts as a heavy tax on the raiyats, as it diminishes very materially the price they can obtain for their holdings, when forced to sell. That the usage of transfer has become universal in Orissa is proved by the figures that have been compiled in the Revision Settlement. During the past ten or twelve years 140,000 acres of raiyati land, or 10 per cent. of the whole, have changed hands for an aggregate consideration of 77 lakhs of rupees, and when to this is added the sum paid to landlords by transferees, the total value of the transferred land approaches closely to the figure of one hundred lakhs. The statistics compiled by officers of settlement show that two-thirds of the transferred area consisted of part holdings. Indeed, the average area covered by single transaction is only ·80, or four-fifths of an acre. The statistics further prove that only 30 per cent. of the transferred area, or 3 per cent. of the total raiyati area of Orissa, has passed into the hands of money lenders and landlords during the past decade. The great bulk of the transactions has occurred between the raiyats themselves, and there is little reason to fear that recognition of the right of transfer will encourage general improvidence amongst the peasantry of Orissa.

"Although no specific provision for the recognition of this right has been made in the Bill, I am authorised to state that Government has an open mind on the subject and is prepared to give it further consideration. My own recommendation is that the right of transfer on payment of a sum equal to one-fourth of the consideration money should be recognised in the Act, subject to a right of personal objection on the part of the landlord, of which the Collector will be arbiter. A reasonable objection would be that the transferee is a habitual defaulter, or a professional money-lender. The Council is invited to consider this proposal. I may add that the proposal was favourably considered by a majority of the Committee which discussed the question with Mr. Maddox in March 1909, that according to the experience of the Revision Settlement officers, one-fourth of the consideration money was the price paid for consent in the vast majority of cases, and that there is a general consensus of opinion in favour of fixing this limit.

"I will next refer briefly to four important subjects on which the Bill contains provisions that are not to be found in the Bengal Tenancy Act, or differ from the provisions of that Act. They are, first, produce rents, second, communal lands, third, common managers, and fourth, maintenance of land records.

"Produce-rents are dealt with in clauses 41 and 71 of the Bill. Clause 41 which regulates the commutation of produce rents to a cash basis follows the corresponding section 40 of the Bengal Tenancy Act, but contains concessions in favour of landlords to whom commutation would be a considerable hardship, such for example as widows and minors who cannot themselves cultivate or arrange for cultivation, and who depend for their livelihood on receiving their share of the actual produce. There is also a concession in favour of religious and charitable endowments.

[*Mr. H. McPherson.*]

"Clause 71 contains two novel provisions, namely, that produce-rent shall be limited to one-half of the gross produce of the year, and that a suit for the recovery of produce-rent must be brought within the agricultural year following that in which it becomes due. Both of these provisions were regarded as fair and equitable by the Orissa landlords who were consulted in the Committee of 1909, and I am confident that they will commend themselves to the approval of this Council. The one-half limit is in accordance with the almost universal practice of Orissa, where under the *dhulibhag* system the grain and straw are equally divided at harvest between landlord and tenant. Nor can there be any reasonable objection to the provision limiting the period of recovery. The ordinary period of limitation in a rent suit is three years, and no great hardship arises if the rent be a cash rent, and in the fourth year the landlord sues a raiyat for the rent of the three preceding years, for the cash rent rarely represents more than one-sixth of the average annual produce and is often much less. The case is far different with a produce-rent. It can only spell ruin to a raiyat if he is sued in the fourth year for arrears of rent amounting as a rule to one and a-half times the produce of the year of suit.

"There is next the question of communal lands, by which I mean the roads and pathways, the pasture lands, the water reservoirs used for drinking and irrigation, the burning grounds and burial grounds, and all other lands over which village communities exercise common rights of user. These were recognised in the last Revenue Settlement with the consent of the proprietors, and they have been fully defined and recorded in the course of the Revision Settlement. Provisions for their protection from encroachment are contained in clauses 103A to 103F, which have been separately circulated after due approval by the Supreme Government. They provide for the summary ejectment of trespassers and encroachers. All sections of the population, landlords and tenants alike, are interested in the preservation of these lands, for they are most essential to the welfare of agricultural communities. It is not right that their defence should be left to the public spirit of private individuals. That form of public spirit is sadly lacking in Orissa, or for that matter, throughout Bengal. In Orissa the subject has always received special attention, and these provisions in the Bill are the outcome of mature deliberation.

"On the third subject of common managers I have little to explain except that the controlling jurisdiction is proposed to be transferred from the District Judge to the Collector, and that the opportunity has been taken of amending the law on a number of minor points that have given rise to difficulty. The proposed transfer of jurisdiction was approved by a large majority of the Committee of 1909, as it is a matter of common knowledge that the extended sections of the Bengal Tenancy Act which deal with common managers have not worked well in the past. The Collector, as head revenue authority of the district, is brought more closely into touch with details of estate management and agricultural conditions than the head judicial authority, and is in a better position than he to exercise efficient control over common managers. No one realises this more forcibly than the District Judge himself, as will appear from the letter in which he has submitted his opinions on the Bill.

VIII of 1885.

"My last subject is the maintenance of settlement records, for which provision has been made in Chapter XII of the Bill. It has been for many years the wish of the Supreme Government to introduce into Bengal the policy of maintenance of records which is followed in many other provinces of India. The object of the policy is to improve the administration by bringing it into closer touch with the people, and it has been pointed out that this closeness of touch is a special desideratum in Bengal, where, at least till recent times, there has been no intermediary agency between the rulers and the ruled except the police. The maintenance staff, it is said, would supply the much-felt want of a revenue agency on which the District officer could rely for direct communication with the people. It will be admitted that, could this object be achieved at a moderate cost and without undue harassment of the people, it is an object to be striven for. For the past three years the settlement staff has been experimenting with maintenance

[Mr. H. McPherson.]

in Orissa, but it has been maintenance without legislation, the results are not conclusive, and the question is still under the consideration of Government. Government will be pleased to have the benefit of opinions on the value of the policy, but our present duty as a Council is rather to consider the details of the provisions included in Chapter XII than to pass any general resolution in favour of or against the extension of the policy of maintenance to Orissa. The Chapter, it will be observed, is permissive, and it will rest with the Local Government to say to what areas, if any, its provisions should be applied.

"I have now dealt with all the more important features of the Bill, but so far have not discussed it with special reference to the permanently-settled estates included within the scope of its application. These estates, though few in number, are not inconsiderable in extent, and two of the largest, namely, Kujanj and Kanika, are represented on the Council to-day by their own proprietors. For the information of those who are not acquainted with the history of Orissa, I may explain the origin of these estates. At the date of the first British occupation, Orissa consisted of three distinct zones There was the wild impenetrable hill country on the West and North-West, which was owned by feudatory Chiefs and was never effectively subdued by the Moguls or Mahrattas. The Chiefs paid a small tribute and rendered nominal allegiance, but had absolute power within their estates. This region was exempted by Regulations XII and XIII of 1805 from the operation of the ordinary Revenue and Police Regulations It forms the Tributary Mahals or Garhjats of the present day, and lies beyond the pale of Orissa agrarian law. There was a second zone of seaward estates on the East and South-East, consisting mostly of marsh and wood-land and owned by noble families who were, many of them, related to the last Hindu kings of Orissa. These paid quit-rents, called *peshkash*, to the Mahrattas. The British Government, in 1805, continued the old *peshkash* revenue in perpetuity. There are 12 such estates with an area of 1,760 square miles. They have always been subject to the ordinary laws and regulations of Bengal and are governed by the same agrarian laws as the rest of Orissa, and they have accordingly been included within the scope of the present Bill.

"Between the feudatory estates and the permanently-settled estates lies the core of Orissa, the *Mogulbandi* as it is called, which was fully subject to the sway of the Moguls and Mahrattas and has developed into the temporarily-settled tracts of the present day.

"It may be suggested that the permanently-settled zone is more akin to Bengal proper than to the *Mogulbandi* of Orissa, and that a Bill of which the essential features of difference from the Bengal Tenancy Act are based on, and justified by, the temporary character of Orissa's Revenue Settlement, cannot be suited to the permanently-settled portions of Orissa. On examination, however, it will appear that there is no foundation for this objection. The Bill does not impose any fresh disabilities on landlords. On the contrary, it grants them concessions. In so far as these are limited to temporarily-settled estates, the proprietors of permanently-settled areas have no reason to complain. Insofar as they are general, the permanently-settled proprietor profits by them. Nor does the Bill propose to confer any rights or privileges on raiyats that are not either already enjoyed by the Bengal raiyat or fully justified by the general circumstances of Orissa. It is difficult then to conceive what exception can reasonably be taken to the application of the Bill within the permanently-settled area. If there be any special difficulties that have been overlooked, they may be considered by the Select Committee.

"I have not yet had time to look into the memorial on the subject of *Killa Kujang*, of which copies have been placed before us this morning by the Hon'ble Maharajadhiraja Bahadur of Burdwan, but I have given some description of these *Killajat* estates, and I can assure the Hon'ble Member that the points raised in his memorial will be considered by Government and the Select Committee.

"I have now explained the Bill to the Council, and I hope I have succeeded in making good my confidence that the Bill is not a contentious measure and that it will commend itself to the Council, as it has already,

in its main outlines, commended itself to the approval of the landlords and tenants of Orissa. The time, it may be hoped, has long since passed away when the interests of landlords and tenants were considered to be mutually antagonistic, when what was conceded to the one, was thought to be filched from the other, when tenancy legislation was a tug-of-war in which the landlord pulled for himself and it was left to some officer of Government to pull for the raiyat. A new spirit, one would fain believe, has arisen amongst the landowners of Bengal, which recognises that the prosperity of the landlord is intimately bound up with the prosperity of the tenant, that the cultivator has rights as well as the rent-receiver, that both landlord and tenant have duties as well as rights, and that a policy of give and take, of live and let live, is essential to the general welfare of agricultural communities It is in reliance upon this new spirit that Government has enlarged the bounds and powers of its Legislative Councils. It is to it that I appeal for a fair and sympathetic treatment of the first agrarian measure that has come before the reformed Council of Bengal."

The Hon'ble SIR BIJAY CHAND MAHTAB, Maharajadhiraja Bahadur of Burdwan, said :—

"A new agrarian code for Orissa is undoubtedly to be welcomed in these parts of the present province of Bengal. I also welcome the Hon'ble Mr. McPherson's suggestion that we should go on with the Bill in this Council, for the reason that in the present Council we not only have gentlemen representing the interests of Orissa, but also others who have interests in Orissa as well as in Bengal, and I think that their views would be helpful both to the Government and to the members of the Select Committee. The Hon'ble Mr McPherson is to be congratulated on the lucid way in which he has explained the objects and reasons for this measure. I thought he was going to stop after mentioning about the temporarily-settled areas of Orissa, but he wound up by mentioning the permanently-settled estates of Orissa in which, of course, (being the proprietor of *Kulla Kujang* estate,) I am interested, like my Hon'ble friend, the Raja of Kanika, and he has assured us that the privileges of the *Killajat* or *peshkush* estates will be carefully considered in the meetings of the Select Committee. I need not therefore take up the time of the Council for any length of time here to day. However, I think I should mention here that this Bill makes a great departure regarding the principle of communal lands, and that when the claims of the *Killajat* estates are being considered, it ought to be borne in mind that though gradually the Government has by notification extended several sections of the Bengal Tenancy Act to these estates, a portion of these sections has been practically a dead letter because of the difference of the status of the *Killajat* estates with that of the *sanad* or *Mogulbandi* estates, and therefore the same principle of communal lands cannot possibly apply to these estates. Then, again, regarding the principle of introducing into the Orissa Tenancy Bill wholesale sections of the Bengal Tenancy Act, the Hon'ble Mr. McPherson has himself admitted that because it was thought that if this principle was followed, we could not have a good agrarian code for Orissa, special care will have to be taken where these sections of the Bengal Tenancy Act are now being introduced. In this connection, I should like to mention the fact that perhaps the Bengal Government is at a disadvantage because the Government of India wish Chapter XII to be included. Although that Chapter is permissive in the Orissa Tenancy Act, the Government has not been able to make out a good case for the inclusion of this Chapter. I certainly think that Chapters XI, XII and XIII should, in the first place, not only not apply to the permanently settled-estates—, but also not apply to the temporarily-settled estates. It will have to be carefully considered whether it would be expedient to apply these particular Chapters to these areas. Regarding *khas* lands, it is only of late that the Government has begun to make a distinction between *nij-jote* and *nij-chas* lands. I shall reserve my views on the subject for the present. With these few remarks I support the proposal regarding the formation of a Select Committee."

VIII of 1885.

VIII of 1885.

The motion was then put and agreed to.

[*Raja Rajendra Narayan Bhanja Deo.*]

The Hon'ble Raja Rajendra Narayan Bhanja Deo, in the absence of the Hon'ble Mr Das, moved that all further proceedings in connection with the Bill to amend certain enactments relating to the law of landlord and tenant in the districts of Cuttack, Puri and Balasore, in the Orissa Division, in this Council, be stayed.

He said:—

"This motion stands in the name of the Hon'ble Mr. Das. Owing to ill-health he has asked me to move it With your Honour's permission I beg to do this.

"I thank the Hon'ble Mr. McPherson for the trouble he has taken over this Bill. After Orissa was brought under British administration, no attention was paid to the peculiar conditions of social life or of rights in land. I am using the word 'land' in the most extensive sense, so as to include in it all right and interest in land, whether it be that of the zamindar or ratyat or proprietors of different kinds. The Bengal Government based their legislative measures on their experience and knowledge acquired in Bengal. The necessary result of this was a disturbance of rights and customs relating to lands existing in Orissa at the time when legislative enactments, meant for Bengal, were introduced or extended to Orissa. The present Bill is a proof of the disregard and want of attention which the people of Orissa have received from this Government in the past. Orissa was brought under the British Government in 1803. The circumstances under which the East India Company took possession were very peculiar. The priests of the most sacred temple in India, the temple of Jagannath, invited the British army to take possession of the province On its way to the Central Provinces the British army received friendly assistance from the Rajas of Orissa. There are now several tributary Chiefs in Orissa. The people of Orissa have a history of their own and had a feudal system. It is no credit to any Government after having ruled over such a province for more than a century, to discover that the province required a Tenancy Bill specially suited for the state of things and conditions of life in it Every time the Bengal Legislative Council had before it any law which was meant to apply to Orissa, the Council had no Uriya among its Hon'ble Members Sometimes Orissa has been selected as the experimental ground for legislation in contemplation. I could enumerate several acts of injustice to the people of Orissa. So, it is no wonder that the people of Orissa feel, as a race, that justice was not done to them by the Bengal Government, considering the treatment the British nation received from them in the early days of British occupation. Whether this feeling of the people is justifiable or not, it is neither necessary nor profitable to discuss here, but the feeling exists An attempt to pass this Bill in this Council, after His Imperial Majesty's announcement at Delhi that Orissa should be placed under a separate Government, would intensify the feelings of the people against the Council, and, besides, this step would be looked upon as the last and perhaps the worst attempt of the Bengal Government to deprive Orissa of any opportunities of improvement.

"My regard for the reputation of your Honour and for the Hon'ble Members of this Council is my first reason for proposing that this Bill should not be referred to a Select Committee, and that nothing further should be done in regard to it. This Government will have no connection with the administration of Orissa a few weeks hence. The Act will be administered by a Government which has not yet been constituted. This Council has no means of knowing the opinion of the heads of that Government on the provisions of this Bill, nor the opinions of the Executive and Legislative Councils. This is really a legislation devoid of any responsibility, looked at from our point of view, and as an unauthorised assumption of duty, looked from the new Government's point of view. I do not understand why the Council should be so anxious to rush this Bill. Is it because this Council has more time than work in hand, or that the people of Orissa wish that this piece of legislation should be carried through in this Council? I am not aware that any

respectable body of men in Orissa are anxious to see this Bill passed before the new Government takes the administration of Orissa in hand. The Hon'ble Mr. McPherson has given two reasons why this Bill should be passed by this Council. The first is that, there are in this Council officials with special knowledge of Orissa, and the other is, that there are also in this Council Bengal zamindars who have interests in Orissa. Regarding the officials, who have a special knowledge of Orissa: is not this reason enough why they should go to the new province and carry out there the wishes of His Imperial Majesty in creating a new Government? But if the services of these officers are not available for the work of administration in the new province, we have on record, in the Bill before us, the letters and reports of what all these officers with special knowledge have to say, and if they have anything more to add, they might put in supplementary notes for the benefit of the Legislative Council of the Lieutenant-Governor of the new province.

"It is certainly more reasonable that men who have to administer the law should legislate, rather than that the legislation should be done by men who have no share or responsibility in the administration. Regarding the Bengal zamindars who have interests in Orissa, I will say that their interests will not suffer in the least, and that they will have their representative also in the other Council. With these few words, I beg to move that all further proceedings in this matter be stayed."

The Hon'ble MAULVI SAIYID MUHAMMAD FAKHR-UD-DIN said:—

"I crave your Honour's permission to support this motion. I am very glad that the Hon'ble Mr McPherson had anticipated this motion, and has already given some replies, but it seems to be anomalous that we should legislate for a province which will be administered by another Government, as we have already come to know that Orissa will form part of a separate Government, and, as there will be an Executive Council as well as a Legislative Council, Orissa might be more adequately represented on the new Council of Bihar. I think therefore that this legislation should be postponed for the consideration of the new Council of Bihar.

"With these few words, Sir, I support the motion."

The Hon'ble BABU JANAKI NATH BOSE said:—

"I crave your Honour's permission to oppose this motion. I oppose this motion, Sir, on several grounds One of these is this: there is a general feeling amongst the intelligent people of Orissa that this Bill should be dealt with by this Council. I have consulted several gentlemen who take a lively interest in this measure, in fact, members of public Associations in Cuttack and other gentlemen connected with the administration of the law in that province, and most of them, I think, were of the opinion that this Council should deal with the Bill, not only in Select Committee, but should pass the Bill after proper deliberation. I do not know, Sir, whence my Hon'ble friend, the Raja of Kanika, has gathered his information, that the people of Orissa are opposed to have this Bill dealt with by the present Council. I can say, very safely, that the ordinary public does not take much interest in the work of legislation It is the intelligent, educated portion of the community that really takes any interest in the measures which are before the Legislative Council. Now the Orissa Association of Cuttack is of long standing and is composed of many educated, intelligent and respectable people of that district, and I can very safely and emphatically assure the Council that the Orissa Association as a body does want to have this Bill passed by this Council. Then, Sir, the Hon'ble Mr. Das is not here, and I do not know exactly the reasons which induced him to propose this motion, but then he ought to have seen that there are very special reasons why this Council should pass this Bill. I can endorse the words of my friend, the Hon'ble Mr. McPherson, to this fact that we have this special advantage on this Council that your Honour, the President of this Council, is quite familiar with the rent law of Orissa, and your Honour is in a position

[*Rai Baikuntha Nath Sen Bahadur.*]

o give the result of your experience and knowledge of the rent law of Orissa s well as the defects of the administration of the law in that province. Then, our Honour will also see that Mr. Maddox can be looked upon as an authority on the land law of Orissa. He spent about eight years in the Settlement Department of that province. Not only that: three years back he vas specially deputed by this Government to take the opinion of representtive people as regards the provisions of a self-contained rent law for Orissa and I may say, Sir, he did the work of collection of opinion in very diligent and intelligent way. I suppose if this Bill goes efore another Council we shall lose the advantage of the ripe experience of Ir Maddox. I know he is very busy and has other important duties to ttend to, but, when this Bill is before the Committee, he will no doubt help he Committee with the result of his knowledge and experience. Your Honour vill kindly pardon me for saying that the Hon'ble Mover of this Bill has had o do a great deal with the settlement work of Orissa, and he has, as the Director f Land Records, taken a keen interest in the rent law of that province. The Hon'ble Mr. Das is in the Council and will be on the Select Committee, nd I beg to submit that we shall also have the advantage of his knowledge and f his wide experience. The two most important land-holders of Orissa are also n this Council. I refer to the Hon'ble Maharajadhiraja Bahadur of Burdwan nd the Hon'ble Raja of Kanika. They will also help the Council with their iews regarding their part of the case. It will be a misfortune, I say, if this Bill s to be put aside to be taken up at a convenient time in the future, and many ntelligent people connected with the administration of law in this province vill look upon this postponement as a misfortune. My Hon'ble friend the Raja of Kanika says that the Hon'ble Mr McPherson refers to the presence of he Bengal zamindars as being a good reason for this Council dealing with this Bill. It is a well-known fact—I do not make it a racial question at all, but it s undeniable—that some of the noblemen of this province of Bengal proper are arge landed proprietors in Orissa, and as this is to be a law defining the nterests of both landlords and tenants, it is desirable and practicable to have he views of important Bengal land-holders who have the interest and welfare of Orissa at heart, before the Council also. It is also well known to most of us X of 1859. hat, as the old Act of 1859 has been intruded upon by the extension of some portions of the Bengal Tenancy Act, the land law of Orissa is just at this VIII of 1885 noment in a very uncertain state. It is also very desirable that there should e a self-contained Rent Act for the province. After years of deliberation ve are now in a position to deal with such a Bill, and my Hon'ble friend the Raja of Kanika wants to have this stopped. I should say this was a very unwise step, and there was no reason whatever for its justification.

"With these words, I beg to oppose the motion which has been put by the Hon'ble Raja of Kanika."

The Hon'ble Rai Baikuntha Nath Sen Bahadur said:—

"I wish to make a few observations which would also involve a personal explanation. Before I was in possession of the collection of opinions in the shape of a big volume which has been furnished to us a day before this meeting of the Council, and before I had any talk with the Maharaja of Burdwan and he Hon'ble Babu Hrishikesh Saha, I had a talk outside this Council with the Hon'ble Mr. Das and the Hon'ble Raja of Kanika. Hearing, from them hat they did not wish the Bill to be proceeded with further in this Council, was inclined then to support their views, and to support them in asking for keeping the Bill in abeyance till the formation of the new Council, but, Sir, hough I have not had time enough to go through the whole of the pages of his big volume, after having heard a very elaborate and able speech with which he Bill has been referred by the Hon'ble Mover of the Bill to the Select Committee, I must say that I am obliged to change my opinion. It would be nexpedient and injudicious to postpone the further consideration of this Bill. n this Council, we have now got able officers of Government who have studied he subject carefully, and the speech of the Hon'ble Mover of this Bill shows what scope it has in view and what range it covers. This involves very important

questions, and as has also been referred to by the Hon'ble Maharajadhiraja of Burdwan that it would involve some questions of rights by treaties and engagements by the East India Company and the then owners of estates, confirmed by Regulations of the British Government. They require mature deliberation which can hardly be expected in a new Council. Here we have got officers who have devoted years and years to a study of these questions, and there is no knowing when this Bill can be taken up by the new Council. There may be a delay of a year or even two years. I therefore beg to oppose this motion of the Hon'ble Raja of Kanika, and in fact it seems to me that, after the adoption of the motion for a reference of the Bill to a Select Committee, this motion seems to me to be rather out of order."

The PRESIDENT said :—

"I must ask the Hon'ble Mover to consider whether he really wishes to press the question. I would put it to him rather in this way :

"That if, when the Select Committee has presented its Report, he still thinks that the Bill is not satisfactory, and does not meet his point of view, it will be quite open to him, then, to get a postponement or take any other steps that he thinks proper to avoid the passing of the Bill by this Council.

"It hardly seems reasonable to object to its being considered by a Select Committee which has such special advantages. I think he said that the interests of Orissa have not been well looked after before. It is very doubtful whether in the new Council he will ever get together a Select Committee which contains so many representatives of Orissa and at the same time so many officers of Government who have special experience of Orissa. It may be years before such a Select Committee can be brought together in the new province. I would ask him whether he really wishes to press his motion."

The Hon'ble RAJA RAJENDRA NARAYAN BHANJA DEO said :—

"I beg to withdraw this motion with the option of moving it again when the Report of the Select Committee has been presented."

The motion was subsequently, by leave of the President, withdrawn.

THE CALCUTTA PORT (AMENDMENT) BILL, 1912.

The Hon'ble Mr. Slacke moved for leave to introduce a Bill further to amend the Calcutta Port Act, 1890.

He said :—

"Experience has shown that in certain matters some of the sections of the existing Act are in conflict. To remove this and also to assimilate the powers of the Vice-Chairman with reference to expenditure debitable to the revenue account with those he possesses as regards the capital account, and to simplify the existing procedure with reference to carrying out repairs and maintenance, are the chief objects of this Bill which, I think, is a non-contentious measure."

The motion was put and agreed to.

The Hon'ble Mr. Slacke introduced the Bill, and moved that it be read in Council.

The motion was put and agreed to, and the Secretary accordingly read the title of the Bill.

The Council was then adjourned to Friday, the 23rd February, 1912, at 11 A.M.

A. W. WATSON,

Offg. Secretary to the Bengal Legislative Council.

CALCUTTA,

The 16th January, 1912.

B. S. Press—23-1-1912—3117J—500—J. L. C.

Abstract of the Proceedings of the Bengal Legislative Council assembled under the provisions of the Indian Councils Acts, 1861, 1892 and 1909.

THE Council met in the Durbar Hall at Belvedere on Monday, the 26th February, 1912, at 10 A.M.

Present:

The Hon'ble MR F. A. SLACKE, C.S.I., *Vice-President, presiding.*

The Hon'ble RAJA KISORI LAL GOSWAMI.

The Hon'ble MR. R. T. GREER, C.S.I.

The Hon'ble MR D. J. MACPHERSON, C.I.E.

The Hon'ble MR. E. W. COLLIN.

The Hon'ble MR. C. J. STEVENSON-MOORE, C.V.O.

The Hon'ble MR. J. H. E. GARRETT.

The Hon'ble MR. E. P. CHAPMAN.

The Hon'ble MR. B. K. FINNIMORE

The Hon'ble MR. C. A. WHITE.

The Hon'ble MR. J. H. KERR, C.I.E.

The Hon'ble MR. H. L. STEPHENSON.

The Hon'ble MR. G. W. KUCHLER, C.I.E.

The Hon'ble SIR FREDERICK LOCH HALLIDAY, KT., M.V.O., C.I.E.

The Hon'ble MR. J. G. CUMMING, C.I.E.

The Hon'ble MR. C. E. A. W. OLDHAM.

The Hon'ble MR. H. MCPHERSON.

The Hon'ble MAHARAJA BAHADUR SIR PRODYOT KUMAR TAGORE, KT.

The Hon'ble SIR FREDERICK GEORGE DUMAYNE, KT.

The Hon'ble RAI SITANATH RAY BAHADUR.

The Hon'ble LT.-COL. G. GRANT GORDON, C.I.E.

The Hon'ble BABU JANAKI NATH BOSE.

The Hon'ble SIR BIJAY CHAND MAHTAB, K.C.S.I., K.C.I.E., I.O.M., Maharajadhiraja Bahadur of Burdwan.

The Hon'ble MAHARAJA MANINDRA CHANDRA NANDI.

The Hon'ble MAHARAJ-KUMAR GOPAL SARAN NARAYAN SINGH.

The Hon'ble BABU KIRTANAND SINHA.

The Hon'ble RAJA RAJENDRA NARAYAN BHANJA DEO.

The Hon'ble BABU DEBA PRASAD SARBADHIKARI.

The Hon'ble MR. NORMAN MCLEOD.

The Hon'ble MR. F. H. STEWART, C.I.E.

The Hon'ble MR. W. J. BRADSHAW.

The Hon'ble MR. GOLAM HOSSEIN CASSIM ARIFF.

The Hon'ble MR. SAIYID WASI AHMAD.

The Hon'ble MAULVI SAIYID MUHAMMAD FAKHR-UD-DIN.

The Hon'ble BABU HRISHIKESH LAHA.

The Hon'ble MR. K. B. DUTT.

The Hon'ble MAULVI SAIYID ZAHIR-UD-DIN.

The Hon'ble MR. D. J. REID.

The Hon'ble RAI SHEO SHANKAR SAHAY BAHADUR.

The Hon'ble MR. M. S. DAS.

The Hon'ble RAI BAIKUNTHA NATH SEN BAHADUR.

The Hon'ble BABU MAHENDRA NATH RAY.

The Hon'ble KHAN BAHADUR MAULVI SARFARAZ HUSAIN KHAN.

The Hon'ble BABU BRAJ KISHOR PRASAD.

The Hon'ble MR. DIP NARAYAN SINGH.

The Hon'ble BABU BAL KRISHNA SAHAY.

OATH OR AFFIRMATION OF ALLEGIANCE.

The Hon'ble Mr. Stephenson and the Hon'ble Mr. Reid made the prescribed oath or affirmation of their allegiance to the Crown.

[*Babu Bal Krishna Sahay; Mr. Stevenson-Moore; Mr. Chapman.*]

QUESTIONS AND ANSWERS.

DEDICATION OF FEMALE CHILDREN TO THE TEMPLE OF JAGANNATH IN PURI

The Hon'ble BABU BAL KRISHNA SAHAY asked:—

I. (*a*) Has the attention of the Government been drawn to the open letters published in a Calcutta paper named *Satya Sanatan Dharma* on the 14th November, 1910, and again on the 6th April, 1911, addressed to the Government of Bengal and to the Imperial Government, respectively, bringing to light the custom of dedicating female children to the temple of Jagannath in Puri (Orissa), who, when grown up, lead immoral lives as long as they live, and requesting the Government to abolish the said custom?

(*b*) Is the Government in a position to say whether the allegations made in the said paper are correct?

(*c*) Will it please the Government to state whether any communication on this subject has been received by it from the Secretary of State for India?

(*d*) Is the Government aware that the aforesaid complaint of the *Satya Sanatan Dharma* has been supported by nearly the entire Indian Press, not only by those in favour of reform, but also by such orthodox Hindu papers as the *Hitabadi* and *Hita Varta* of Calcutta?

(*e*) Will the Government be pleased to state whether the Government propose to take any action in the matter with the object of stopping this immoral custom?

The Hon'ble MR. STEVENSON-MOORE replied:—

(*a*) The answer is in the affirmative.

(*b*) Government has ascertained that about 100 dancing girls are attached to the Jaganath Temple at Puri and are dedicated to its service. The allegations referred to are believed not to be applicable to any other temple in the Province.

(*c*) The answer is in the affirmative.

(*d*) Government is aware that these allegations have been made by other newspapers.

(*e*) Government would view with favour and lend its support to any organized attempt made by Hindu society at large to eradicate the evils which have grown up round the system at Puri, but it considers that any such movement should emanate from the people themselves, and it does not propose to initiate reforms on its own motion in a matter so closely connected with religious observance.

UNSUITABILITY OF THE INDIAN SUCCESSION ACT TO THE ABORIGINAL TRIBES OF CHOTA NAGPUR.

The Hon'ble BABU BAL KRISHNA SAHAY asked:—

II. Is the Government aware that the provisions of the Indian Succession Act are quite unsuited to the conditions of the Mundas, Urans and other aboriginal tribes of Chota Nagpur who, in the matter of succession and inheritance, follow their own peculiar customs?

The Hon'ble MR. CHAPMAN replied:—

It has been ascertained that the aborginal tribes in Chota Nagpur are governed by peculiar customary rules of succession and inheritance. As Chota Nagpur is about to be dissociated from the Province of Bengal, this Government consider that the question of the unsuitability of the provisions of the Indian Succession Act, in the case of these tribes, may be properly left to the new Government to deal with."

[*Babu Braj Kishor Prasad; Mr. Chapman.*]

LOCATION OF AN ADDITIONAL JUDGE OR A SUBORDINATE JUDGE AT MOTIHARI

The Hon'ble BABU BRAJ KISHOR PRASAD asked:—

III. (*a*) Will the Government now be pleased to supply the figures aske for in my question No. XII (*a*) put in this Council on the 15th August, 1911, o the subject of the location of an Additional Judge or a Subordinate Judge : Motihari in the Champaran district?

(*b*) Will the Government be pleased to state whether it has received th reports of the District Judge and the Subordinate Judge of Muzaffarpur, th District Magistrate and Collector of Motihari and the Sub-divisional Magistrat of Bettiah, as also the opinions of the leading men of the town and district o Motihari and of the Manager of the Bettiah Raj on the subject of the memori submitted by the people of Motihari praying for the location of an Additiona Judge or a Subordinate Judge at that station?

(*c*) If so, will the Government be pleased to state whether the consensus o the said opinions is in favour of the location of an Additional Judge or a Sub ordinate Judge at Motihari?

(*d*) Will the Government be pleased to state whether it intends to locate a Additional Judge or a Subordinate Judge at Motihari; or what action, i any, it intends to take on the said memorial and on the reports of the official referred to in clause (*b*) of the question?

The Hon'ble MR. CHAPMAN replied:—

(*a*) The figures asked for are contained in the statement which is place on the table.

(*b*) (*c*) (*d*) The District Judge and the High Court have been consulted i regard to the prayer contained in the Memorial for the location of a Additional or Subordinate Judge's Court at Motihari. The District Judge ha replied, and the High Court's opinion is awaited. The Government is no disposed to take any action until the High Court's opinion is received.

STATEMENT REFERRED TO BY THE HON'BLE MR. CHAPMAN IN HIS ANSWER TO QUESTIO No. III ASKED BY THE HON'BLE BABU BRAJ KISHOR PRASAD AT TH COUNCIL MEETING OF THE 26TH FEBRUARY 1912.

Statement showing the Civil work done in the district of Champaran.

YEAR.	Civil suits (including miscellaneous cases) of value exceeding Rs. 1,000.	Civil suits of value exceeding Rs. 100 which could be tried by a Court of Small Causes	Civil appeals
1895 ...	49	266	189
1896 ...	65	377	182
1897 .	89	276	180
1898 ...	78	224	691
1899 ...	87	224	140
1900 ...	66	275	160
1901 ...	98	251	221
1902	125	255	160
1903 ...	71	231	97
1904 ...	94	261	145
1905 ...	83	250	144
1906 ...	185	414	293
1907 ...	231	430	136
1908 ...	192	409	119
1909 ...	231	339	138
1910 ...	223	295	132

[*Babu Braj Kishor Prasad; Mr. Stevenson-Moore; Mr. Chapman.*]

DIVISION OF THE PROVINCIAL JUDICIAL AND EXECUTIVE SERVICES BETWEEN THE PROVINCES OF BENGAL AND BIHAR.

The Hon'ble BABU BRAJ KISHOR PRASAD asked:—

IV.—(*a*) Will the Government be pleased to state whether the Provincial Judicial and Executive Services are going to be divided between the Provinces of Bengal and Bihar?

(*b*) If so, from what date will the said division take effect?

(*c*) Will the Government be pleased to specify, grade by grade, the number of Subordinate Judges, Munsifs and Deputy Magistrates which it is intended to assign to the Province of Bihar?

(*d*) Will the Government be pleased to state whether, in making the division of the services, it intends to retain in Bihar such Bengali (Judicial and Executive) Officer as have experience of Bihar districts?

(*e*) Is the Government in a position to state how many Biharis are likely to be appointed as Subordinate Judges in the new Province of Bihar at the time of the division of the *cadre*?

The Hon'ble MR. STEVENSON-MOORE replied:—

(*a*), (*b*) *and* (*c*) The question of the division of the Provincial Judicial Service between the Provinces of Bengal and Bihar is under consideration. The Executive Service will be divided between both the Provinces, but no particulars regarding the date from which the division will take place, or the grades to be assigned to either Province, have yet been finally decided.

(*d*) The principle suggested is being followed so far as it is consistent with the other considerations which arise.

(*e*) Government is not at present in a position to state how many Biharis are likely to be appointed as Subordinate Judges in the new Province of Bihar.

ABOLITION OF THE 4TH GRADE OF THE PROVINCIAL JUDICIAL SERVICE.

The Hon'ble BABU BRAJ KISHOR PRASAD asked:—

V.—In view of the fact that the Government has abolished the eighth grade (on Rs. 200) of the Provincial Executive Service, will the Government be pleased to state whether it intends to take any action with a view to a similar abolition of the fourth grade of the Provincial Judicial Service, which carries the same pay?

The Hon'ble MR. CHAPMAN replied:—

Government have already had a proposal before them for raising the pay of the lowest grade of Munsiffs. The consideration of the question has been postponed, pending the reconstitution of the Province.

THE NEW SECRETARIAT AND BIHAR'S CLAIM.

The Hon'ble BABU BRAJ KISHOR PRASAD asked:—

VI. (*a*) Has the attention of the Government been drawn to an article headed "The New Secretariat and Bihar's claim" which appeared in the issue of *Young Bihar* of the 29th January, 1912?

(*b*) Will the Government be pleased to state whether the statement, made in some of the Calcutta papers, that it is proposed to staff the Secretariat for the new Province of Bihar solely with officers taken from Calcutta, is correct?

(*c*) Will the Government be pleased to state whether, when making appointments to the new Secretariat and other offices in the new Province of Bihar, it intends to consider the claims of the people of Bihar, Orissa and Chota Nagpur?

[*Mr. Stevenson-Moore; Babu Braj Kishor Prasad; Mr. Stephenson.*]

(*d*) Will the Government be pleased to state whether it intends to notify the number of such appointments and to invite applications therefor?

(*e*) Will the Government be pleased to state when the said appointments will be made and who will make them?

The Hon'ble MR. STEVENSON-MOORE replied:—

(*a*) The answer is in the affirmative.

(*b*) to (*e*) The scale of Secretariat and other office establishments for each of the new Provinces and the Assam Administration has not yet been fixed, and, until this is done, the selection of the *personnel* to fill the several posts cannot be undertaken. When the selection is being made, it will be necessary to pay due consideration to the claims of those clerks who are already in the employment of Government. The method of selecting outside applicants to fill available vacancies in the Secretariat and other office establishments of the new Province of Bihar and Orissa will rest with the Government of that Province, when constituted, and is not a matter within the competence of the Bengal Government.

APPOINTMENT OF A SUB-OVERSEER IN THE DALTONGANJ MUNICIPALITY.

The Hon'ble BABU BRAJ KISHOR PRASAD asked:—

VII. (*a*) Has the attention of the Government been drawn to the letter of a Daltonganj Correspondent, which appeared in the *Bihar Advocate* and *Kayastha Messenger* of the 1st and 8th January, 1912, regarding the appointment of a Sub-Overseer in the Daltonganj Municipality?

(*b*) Is it a fact that the claims of many trained Biharis, who had passed the requisite examinations of the Bihar School of Engineering, were overlooked by the Municipal Authorities in favour of an outsider who had undergone no such training and had none of the necessary qualifications?

(*c*) If the answer to the last question is in the affirmative, will the Government be pleased to state whether it intends to take any action with a view to putting a stop to occurrences of this nature?

The Hon'ble MR. STEPHENSON replied:—

The appointment of Municipal servants is regulated by statute. Under section 46 of the Municipal Act, the Municipal Commissioners can decide upon the scale of establishment necessary, and, subject to this scale, the Chairman has powers to appoint such persons as he may think fit, but an appointment to an office, the salary of which is Rs. 50 a month, requires the sanction of the Commissioners at a meeting. These powers are limited by section 61 which requires the sanction of the Commissioner when the salary of an office is Rs. 100 a month and that of the Local Government when the salary is Rs. 200. No qualifications have been prescribed for the post of Municipal Sub-Overseer, and Government is unwilling to interfere with the discretion of the Municipality by inquiring into the circumstances of this particular appointment.

SUB-REGISTRARS AND THE SALARIED SYSTEM.

The Hon'ble BABU BRAJ KISHOR PRASAD asked:—

VIII. (*a*) Will the Government be pleased to state whether it is a fact that, on or about the 21st March, 1910, several Sub-Registrars, who had served in that capacity before the introduction of the salaried system, submitted separate memorials to Government praying that the period of their services before the introduction of that system might be counted towards pension on the grounds advanced in their memorials?

(*b*) Will the Government be pleased to state whether it has considered the subject of the said memorials and, if so, what action has been taken thereon?

[*Mr. Kerr; Babu Braj Kishor Prasad; Mr. Stevenson-Moore; Rai Baikuntha Nath Sen Bahadur; Mr. Chapman; Mr. Golam Hossein Cassim Ariff.*]

The Hon'ble MR. KERR replied:—

(*a*) The answer is in the affirmative.

(*b*) Government has considered the memorials. The orders that service before the introduction of the salaried system should not count for pension were passed by the Government of India, and this Government, in view of the other advantages gained by the Sub-Registrars from the introduction of the salaried system, did not feel justified in asking for a reconsideration of the matter. Orders have, however, been issued that the ordinary rules relating to retirement should be applied with discretion in the case of Sub-Registrars, whose work is mainly of a routine character and does not demand so much mental and physical energy as is required in most other services. It has been directed that consideration should be shown in the case of a Sub-Registrar who has exceeded the age of 55 years, but who is still fit for work, and who may qualify for pension with a reasonable amount of extension of service.

COTTON-GAMBLING IN CALCUTTA

The Hon'ble BABU BRAJ KISHOR PRASAD asked:—

IX. (*a*) Has the attention of the Government been drawn to a series of articles on the subject of the growing practise of "Cotton gambling" in Calcutta, which appeared in the weekly edition of the *Bharatmitra* of the 28th October, 1911, and in the daily edition of the same paper of the 5th December, 1911, 4th January, 1912, and 16th January, 1912, respectively?

(*b*) If so, will the Government be pleased to state whether it has taken, or intends to take, any action in the matter with a view to putting a stop to this evil?

The Hon'ble MR. STEVENSON-MOORE replied:—

(*a*) The reply is in the affirmative.

(*b*) A proposal to legislate with a view to suppress Cotton-gambling is now under the consideration of Government.

INCREASE OF PAY TO OFFICERS OF THE LAST GRADE OF THE PROVINCIAL JUDICIAL SERVICE

The Hon'ble RAI BAIKUNTHA NATH SEN BAHADUR asked:—

X. (*a*) Will the Government be pleased to state whether, now that the eighth grade of the Provincial Executive Service has been abolished and the officers of that grade have been amalgamated with the officers of the seventh grade, and accorded a salary of Rs. 250 per mensem, it intends to raise the pay of the officers of the last grade of the Provincial Judicial Service to Rs. 250 per month?

(*b*) If so, will the Government be further pleased to state when it intends to do this?

The Hon'ble MR. CHAPMAN replied:—

(*a*) & (*b*) The Hon'ble Member is referred to the reply given to the Hon'ble Babu Braj Kishor Prasad's question upon the same subject.

COTTON-GAMBLING IN CALCUTTA.

The Hon'ble MR. GOLAM HOSSEIN CASSIM ARIFF asked:—

XI. (*a*) Has the attention of the Government been drawn to the recent establishment of a large number of shops in the town of Calcutta and its suburbs where gambling is carried on publicly, under a system known as the "Cotton figure", and to the fact that these shops are frequented by, amongst others, women and school children?

[*Mr. Stevenson-Moore; Khan Bahadur Maulvi Sarfaraz Husain Khan; Mr. Stephenson; Mr. Kerr; Mr. K. B. Dutt.*]

(*b*) Has the attention of the Government been drawn to the fact that the Commissioner of Police has expressed his inability, under the present law, to close these shops or to stop gambling therein?

The Hon'ble MR. STEVENSON-MOORE replied :—

(*a*) & (*b*) The answers to both questions are in the affirmative.

IMPROVEMENT OF THE PAY AND PROSPECTS OF CIVIL ASSISTANT SURGEONS IN BENGAL.

The Hon'ble KHAN BAHADUR MAULVI SARFARAZ HUSAIN KHAN asked :—

XII. (*a*) Will the Government be pleased to state whether it has received any communication on the subject of the proposals submitted by it to the Government of India with reference to the petition submitted, in 1907, by the Civil Assistant Surgeons in Bengal, praying that their pay and prospects in the service might be improved?

(*b*) If so, will the Government be pleased to lay the communication on the table?

(*c*) Will the Government be pleased to state how many Civil Assistant Surgeons hold the appointment of Civil Surgeon within the territories under the jurisdiction of the Lieutenant-Governor of Bengal?

The Hon'ble MR. STEPHENSON replied :—

A communication was received from the Government of India in October last, but a further reference to that Government was necessary. As the matter is still a subject of correspondence with the Government of India, the papers cannot be laid on the table.

There are at present three Civil Assistant Surgeons in permanent charge of Civil Surgeoncies in this Province.

SURVEY AND SETTLEMENT OPERATIONS IN BIHAR.

The Hon'ble KHAN BAHADUR MAULVI SARFARAZ HUSAIN KHAN asked :—

XIII. (*a*) Will the Government be pleased to state whether it has received the report called for from the Director of Land Records, in regard to the representation submitted by the Bihar Landholders' Association, Bankipore, on the 5th April, 1911, relating to the grievances of the people of Bihar against Survey and Settlement operations in that Province?

(*b*) If so, will the Government be pleased to lay the report on the table?

The Hon'ble MR. KERR replied :—

(*a*) The answer is in the affirmative.

(*b*) The report was received from the Board of Revenue on the 8th February, 1912, and is still under the consideration of Government and so cannot be laid on the table.

ALLEGED PROPOSED PARTITION OF THE DISTRICT OF MIDNAPORE.

The Hon'ble MR. K. B. DUTT asked :—

XIV. (*a*) Will the Government be pleased to state whether it has any proposal now under consideration for the partition of the district of Midnapore?

(*b*) Is the Government aware that there was such a proposal in 1907, but that the Government of India declined to take any action upon it?

(*c*) Is the Government aware that a memorial was submitted to the Government of India in 1907 by the people of Midnapore protesting against the partition of the district of Midnapore?

Mr. Stevenson-Moore; Mr. K. B. Dutt; Mr. Chapman; Babu Mahendra Nath Ray; Mr. Stephenson.]

(*d*) Is the Government aware that the Government of India informed the memorialists, through the Government of Bengal, in a letter dated the 17th of April, "that the people will be given a full opportunity of expressing their opinion before any such step is taken," meaning thereby "any step towards the partition of" the district of Midnapore?

No year has been stated.
A. W. WATSON—
16-2-1912.

(*e*) Will the Government be pleased to state what opportunity, if any, has been given to the people and the public, or to any representative body, to express their opinion regarding the rumoured partition of the district of Midnapore?

(*f*) Is the Government aware that there is a strong feeling in Midnapore regarding the proposed partition of the district?

(*g*) Will the Government be pleased to state whether it has considered the question of the expenditure which will be entailed upon the provincial revenues if the proposed partition is effected?

(*h*) Will the Government be pleased to state what is likely to be the recurring and non-recurring expenditure if the partition of the district is effected and a new district is created?

(*i*) Will the Government be pleased to defer the consideration of the question of the proposed partition of the district of Midnapore till the new Governorship in Council is constituted?

The Hon'ble MR. STEVENSON-MOORE replied:—

The answer to the first question asked by the Hon'ble Member is that proposals for the partition of the district of Midnapore are not now under consideration and will not be taken into consideration by the present Government. In these circumstances the Hon'ble Member will perhaps agree that the remaining questions call for no reply.

LOCATION OF A SUBORDINATE JUDGE AT HOWRAH.

The Hon'ble MR. K. B. DUTT asked:—

XV. Will the Government be pleased to state what steps, if any, have been taken for the location of a Subordinate Judge at Howrah?

The Hon'ble MR. CHAPMAN replied:—

The question of the location of a Subordinate Judge's Court at Howrah is under the consideration of Government, in consultation with the High Court.

GOVERNMENT CONTRIBUTION TOWARDS THE EXTENSION OF THE HOWRAH WATER-WORKS.

The Hon'ble BABU MAHENDRA NATH RAY asked:—

XVI. Will the Government be pleased to refer to Bengal Government letter No. 712M. (Municipal Department), dated the 4th April, 1911, addressed to the Commissioner of the Burdwan Division, intimating that the Lieutenant-Governor in Council was pleased to promise a contribution of 5 lakhs of rupees from Provincial Revenues towards the costs for the extension of the Howrah water-works, and to state whether the contribution was burdened with any condition?

The Hon'ble MR. STEPHENSON replied:—

The promise of the contribution of rupees 5 lakhs from Provincial Revenue towards the cost of the extension of the Howrah water-works was made upon a full consideration of all the bearings of the rough project then before Government. This consideration included the probability of a supply of filtered water being made available to the Uttarpara Municipality. The promise was of course contingent upon the detailed plans being in substantial conformity with the rough project.

[*Babu Mahendra Nath Ray; Mr. Stephenson; Mr. Greer.*]

SUPPLY OF FILTERED WATER TO THE UTTERPARAH MUNICIPALITY.

The Hon'ble BABU MAHENDRA NATH RAY asked :—

XVII. Has the attention of the Government been drawn to a memorandum No. 963M., dated the 18th October, 1911, addressed by the Commissioner of Burdwan to the Magistrate of Howrah, forwarding copy of a communication from the Sanitary Board in regard to the supply of filtered water to the Utterparah Municipality?

The Hon'ble MR. STEPHENSON replied :—

No copy of the Memorandum by the Commissioner of Burdwan referred to has been forwarded to Government.

DISCONTINUANCE OF THE PRACTICE OF TAKING SPECIAL NOTICE OF THE ADMINISTRATION OF THE HOWRAH MUNICIPALITY IN THE ANNUAL RESOLUTION ON THE WORKING OF MUNICIPALITIES IN BENGAL.

The Hon'ble BABU MAHENDRA NATH RAY asked :—

XVIII. Will the Government be pleased to refer to paragraph 38 of the Government Resolution on the working of Municipalities in Bengal, during the year 1905-1906, and to state for what reason the practice of taking special notice of the administration of the Howrah Municipality in the Annual Resolutions has since been discontinued?

The Hon'ble MR. STEPHENSON replied :—

"A short separate review of the administration of the Howrah Municipality was made for the first time in the Resolution on the working of Municipalities for the year 1902-03 and was discontinued in the Resolution for the year 1907-08. There has been no special reason for the discontinuance since that year, but the necessity for a separate review of the Howrah Municipality depends principally upon the nature of the working during the year."

FINANCIAL STATEMENT.

The Hon'ble Mr. Greer said :—

"It has been thought desirable that the Members of Council should be made acquainted at the earliest opportunity with the procedure contemplated in connection with the Budget for 1912-13.

"In the ordinary course the draft Financial Statement would by now have been examined by the Finance Committee whose recommendations would have been considered by the Local Government, prior to the submission of the second edition of the estimates to the Government of India. The Revised Financial Statement would then have been introduced and explained by the different Members in charge early in March, and Resolutions would have been moved and discussed. Finally the budget debate would have been held, about the end of the month.

"It has probably already struck the Members of this Council that the announcements made by His Imperial Majesty at Delhi, which affect the existing constitution of this Province must have a considerable effect upon this normal procedure. The Finance Committee were consulted originally in the preparation of the estimates for this Province but the estimates for the ensuing year are now being framed separately for that portion of the present Province which will continue in Bengal on the one hand, and for Bihar, Chota-Nagpur and Orissa on the other, with the consequence that there will be no Financial Statement with which this Council, with its present membership

is legitimately concerned. The non-official members from the Burdwan and Presidency Divisions and those officials who will continue in Bengal have no authority to criticise the future Budget of Bihar and Orissa; the estimates for the Burdwan and Presidency Divisions will only be a fragment of the Budget for Bengal, and even in that fragment the non-official and official representatives who are about to sever their connection with Bengal are not interested. The position is peculiar, but it is unavoidable, and in these exceptional circumstances it is hoped that it will be recognised as fair and reasonable that the ordinary budget procedure during the current Session must be waived. This is from no desire to burke discussion but merely as the natural consequence of the unusual conditions existing. The Budget of each of the new Provinces for the next year must simply consist of what the Government of India allot under the various heads. In the absence of a Council capable of dealing with the Budget of each Province, this is the only course. The President therefore has been pleased to exercise his power of suspending such of the Rules as would have rendered the above procedure obligatory, and no Financial Statement or Budget will accordingly be brought before the present Council."

THE CALCUTTA PORT (AMENDMENT) BILL, 1912.

The Hon'ble Mr. Greer moved that the Bill further to amend the Calcutta Port Act, 1890, be referred to a Select Committee consisting of the Hon'ble Mr. Slacke, the Hon'ble Mr. Finnimore, the Hon'ble Mr. White, the Hon'ble Sir Frederick George Dumayne, the Hon'ble Rai Sita Nath Ray Bahadur, the Hon'ble Mr. Norman McLeod, the Hon'ble Babu Hrishikesh Laha and the mover, with instructions to report within a fortnight.

The Motion was put and agreed to.

THE BENGAL MINING SETTLEMENTS BILL, 1911.

The Hon'ble Raja Kisori Lal Goswami moved that the Hon'ble Mr. J. H. Kerr be added to the Select Committee on the Bill to provide for the sanitation of mining settlements in Bengal.

The Motion was put and agreed to.

The Council was then adjourned to Wednesday, the 6th March, 1912, at 11 A.M.

A. W. WATSON,

Offg. Secretary to the Bengal Legislative Council.

CALCUTTA;

The 27th February, 1912.

B. S. Press—6-3-1912—3685J—500—S. C. R

Abstract of the Proceedings of the Bengal Legislative Council, assembled under the provisions of the Indian Councils Acts, 1861, 1892 and 1909.

THE Council met in the Durbar Hall at Belvedere on Wednesday, the 8th March, 1912, at 11 A.M.

Present:

The Hon'ble SIR FREDERICK WILLIAM DUKE, K.C.I.E., C.S.I., Lieutenant Governor of Bengal, sub. *pro tem.*, *presiding*.

The Hon'ble RAJA KISORI LAL GOSWAMI.

The Hon'ble MR. R. T. GREER, C.S.I.

The Hon'ble MR. D. J. MACPHERSON, C.I.E.

The Hon'ble MR. C. J. STEVENSON-MOORE, C.V.O.

The Hon'ble MR. E. P. CHAPMAN.

The Hon'ble MR. B. K. FINNIMORE.

The Hon'ble MR. C. A. WHITE.

The Hon'ble MR. J. H. KERR, C.I.E.

The Hon'ble MR. H. L. STEPHENSON.

The Hon'ble Mr. S. L. MADDOX, C.S.I.

The Hon'ble MR. B. C. MITRA.

The Hon'ble MR. G. W. KÜCHLER, C.I.E.

The Hon'ble MR. L. F. MORSHEAD.

The Hon'ble SIR FREDERICK LOCH HALLIDAY, KT., M.V.O., C.I.E.

The Hon'ble MR. J. G. CUMMING, C.I.E.

The Hon'ble MR. C. E. A. W. OLDHAM.

The Hon'ble MR. H. MCPHERSON.

The Hon'ble MAHARAJA BAHADUR SIR PRODYOT KUMAR TAGORE, KT.

The Hon'ble SIR FREDERICK GEORGE DUMAYNE, KT.

The Hon'ble BABU BHUPENDRA NATH BASU.

The Hon'ble BABU JANAKI NATH BOSE.

The Hon'ble SIR BIJAY CHAND MAHTAB, K.C.S.I., K.C.I.E., I.O.M., Maharaja-dhiraja Bahadur of Burdwan.

The Hon'ble MAHARAJA MANINDRA CHANDRA NANDI.

The Hon'ble MAHARAJ-KUMAR GOPAL SARAN NARAYAN SINGH.

The Hon'ble RAJA RAJENDRA NARAYAN BHANJA DEO.

The Hon'ble MR. J. G. APCAR.

The Hon'ble MR. NORMAN MCLEOD.

The Hon'ble MR. F. H. STEWART, C.I.E.

The Hon'ble MR. W. J. BRADSHAW.

The Hon'ble MR. GOLAM HOSSEIN CASSIM ARIFF.

The Hon'ble DR. ABDULLAH AL MAMUN SUHRAWARDY.

The Hon'ble MR. SAIYID WASI AHMAD.

The Hon'ble MAULVI SAIYID MUHAMMAD FAKHR-UD-DIN.

The Hon'ble BABU HRISHIKESH LAHA.

The Hon'ble MR. K. B. DUTT.

The Hon'ble MAULVI SAIYID ZAHIR-UD-DIN.

The Hon'ble RAI SHEO SHANKAR SAHAY BAHADUR.

The Hon'ble MR. MADHU SUDAN DAS, C.I.E.

The Hon'ble BABU MAHENDRA NATH RAY.

The Hon'ble KHAN BAHADUR MAULVI SARFARAZ HUSAIN KHAN.

QUESTIONS AND ANSWERS.

ALLEGED ARREST OF BABU BEPIN CHANDRA PAL.

The Hon'ble BABU BHUPENDRA NATH BASU asked:—

I. (*a*) Has the attention of the Government been drawn to an incident reported in the *Bengalee* of the 14th instant, concerning the arrest of Babu Bepin Chunder Pal on a charge of theft of a woollen sheet preferred by a man alleged to be an informer in the Criminal Investigation Department?

(*b*) Will the Government be pleased to state whether it is true that Babu Bepin Chunder Pal was arrested by the Sub-Inspector of the Sookea Street Thana on the charge above mentioned and brought out into the street in consequence, and that he was released on his explaining that the complainant had voluntarily left the sheet behind, and that he (Babu Bepin Chunder Pal) had caused it to be sent to Rai Benode Bihari Gupta Bahadur, an officer of the Criminal Investigation Department?

(*c*) Will the Government be pleased to inquire into the circumstances and publish the result of the inquiry?

The Hon'ble MR. STEVENSON-MOORE replied:—

(*a*) "The answer is in the affirmative.

(*b*) It is not true that Babu Bepin Chandra Pal was arrested or that he was released on his explaining, *firstly*, that the complainant had voluntarily left his *alwan* behind, and *secondly*, that he (Babu Bepin Chandra Pal) had caused it to be sent to the Criminal Investigation Department.

(*c*) Government has caused an inquiry to be made and the police report of the facts is placed on the table."

Police Report referred to by the Hon'ble Mr. Stevenson-Moore in answer to Question No. 1, asked by the Hon'ble Babu Bhupendra Nath Basu at the Council Meeting of the 6th March, 1912.

ON the 30th December last, Babu Bepin Chandra Pal left his house at Kalighat by tram at about 9-30 A.M. He was followed by a watcher who proceeded in the trailer car and accompanied Bepin Babu as far as Dr. Sundari Mohan Das' house, at No. 76-77, Sukeas Street. The watcher remained outside in the street. At about 1-30 P.M Babu Bepin Chandra Pal came out of Dr. Das' house and stood on the footpath on Cornwallis Street. The watcher remained at some little distance. Babu Bepin Chandra Pal suddenly turned round and walking fast to where the watcher was standing, caught hold of him by his *alwan* and demanded his name. The watcher inquired for what purpose his name was wanted. Babu Bepin Chandra Pal is then reported to have pulled the watcher by the ear and dragged him by his *alwan* towards Dr. Das' house, at the same time calling to the durwan of the house to come and seize the watcher. Fearing that he would be assaulted inside the house, the watcher escaped, leaving his *alwan* in Bepin Babu's hand. Bepin Babu shouted to a sweetmeat shop-keeper, who was standing by, to capture the watcher. The sweetmeat vendor proceeded in pursuit of the watcher, but was almost immediately called back by Babu Bepin Chandra and his durwan. The watcher proceeded to the Sukeas Street Thana where he reported the occurrence to Sub-Inspector H. C. Laheri who is in charge of the station. Sub-Inspector Laheri, on receipt of this news, accompanied the watcher to the house of Dr. Das taking with him a Head Constable and two constables. On arriving at the house he called out to the durwan but received no response. Shortly afterwards he saw a servant leaving the house with a bundle and a letter. This was evidently the watcher's wrapper which was returned that same afternoon by Babu Bepin Chandra Pal to the late Rai Bahadur Gupta with a letter, which runs as follows:—

Saturday, 30-12-1911.

MY DEAR BINODE BABU,

It was reported to me that a man was shadowing me and making inquiries after me at Dr. Das' house. He was pointed out to me this afternoon by Dr. Das' durwan and

I went up to him to ask him about his name and business, and wanted him to come to Dr. Das' door to be confronted by the durwan. He took fright at this and ran away leaving his wrapper behind. I send this to you and bring it to your notice.

Yours sincerely,
(Sd.) BEPIN CH. PAL.

Sub-Inspector H. C. Laheri, after repeated calls, eventually obtained a response from Babu Bepin Chandra Pal who came to the door of the house and inquired what the matter was. On being informed of the complaint which had been made against him, Bepin Babu stated that he was annoyed at the Police coming to make an inquiry in such a trivial matter when he was in a friend's house, as this was likely to be taken exception to by his friend The Sub-Inspector invited Babu Bepin Chandra to leave the house in order that the inquiry might be conducted elsewhere. Babu Bepin Chandra Pal then came out on the street and on seeing the Police there inquired if he was to be arrested. He complained that the officer who was shadowing him had behaved in an objectionable manner, as he had been making inquiries about him from the servants in Dr. Das' house He admitted having caught hold of the watcher by his wrapper and having dragged him towards the house in order to take his name and address and get him identified by the durwan and the servants, and also admitted having ordered the sweetmeat vendor to pursue the watcher. On this Sub Inspector Laheri, who was present at Bombay on the occasion of Babu Bepin Chandra Pal's recent conviction in the Chief Presidency Magistrate's Court at Bombay, reminded the latter of this incident and remarked that he would not have expected this conduct from him after what he had said in tears in the Court on that occasion. On this Babu Bepin Chandra asked the Sub Inspector to let this matter drop, turn away the spectators who had collected on the spot and to come inside the house. Dr. Sundari Mohan Das himself then arrived on the scene and in the presence of Bepin Pal, apologised for the latter's conduct. Dr. Das and Babu Bepin Pal then both asked the Sub-Inspector to forget the incident and not to give any publicity to it. The Sub-Inspector then left the spot and took no further action in the matter, beyond recording the facts in his thana case register.

It is not true that Bepin Pal was arrested by the Sub-Inspector in connection with this case or that he was released on explaining that the complainant had voluntarily left his *alwan* behind.

GRIEVANCES OF CIVIL ASSISTANT SURGEONS IN THE EMPLOYMENT OF GOVERNMENT.

The Hon'ble MR. K. B. DUTT asked :—

11. (*a*) Has the attention of the Government been drawn to the articles that appeared in the *Amrita Bazar Patrika* of the 18th, 20th and 27th January last, regarding the grievances of Civil Assistant Surgeons in the employ of Government?

(*b*) Will the Government be pleased to state whether the allegations in the said articles as to the difference in the standard of qualifications required for a Civil and Military Assistant Surgeon, respectively, are substantially true?

(*c*) Will the Government be pleased to state what rates of pay are drawn by, and what posts are open to, Civil Assistant Surgeons and Military Assistant Surgeons, respectively?

(*d*) Will the Government be pleased to lay on the table a statement showing the number of Civil Surgeonships that have been allotted to the Subordinate Medical Service Department, and the proportion in which these appointments have been distributed between Civil and Military Assistant Surgeons?

(*e*) Will the Government be pleased to state what action, if any, it intends to take in regard to the representation of grievances submitted to it by the Civil Assistant Surgeons some five years ago?

(*f*) Will the Government be pleased to state what rates of pay it intends to give to Civil Assistant Surgeons?

[*Mr. Stephenson.*]

The Hon'ble MR. STEPHENSON replied:—

(*a*) "The answer is in the affirmative.

(*b*) A statement is laid on the table showing the qualifications required from candidates for each service and the length and nature of the course and the method of examination in each case.

(*c*) A statement showing the rates of pay drawn by Military and Civil Assistant Surgeons is laid on the table. Government assists the Military authorities by maintaining in civil employment a war reserve of Military Assistant Surgeons and with that view 23 appointments are set aside to be filled by Military Assistant Surgeons. The Assistant Surgeons holding these appointments receive only the pay of their grade. Both Civil and Military Assistant Surgeons are eligible for Civil Surgeoncies.

(*d*) In the Province, as it stands at present, 13 Civil Surgeoncies are listed for Assistant Surgeons. The full number cannot be worked up to until the uncovenanted medical officers at present in the service have retired. Of these 13 appointments, 6 are intended for Military Assistant Surgeons and 7 for Civil Assistant Surgeons.

(*e*) A revised scale of pay will be introduced with effect from 1st April. Orders on the other suggestions made in the memorial have already been passed.

(*f*) The new scale of pay is set forth in the Resolution published in to-day's Gazette of which a copy is laid on the table."

IENT REFERRED TO BY THE HON'BLE MR. STEPHENSON IN HIS ANSWER TO QUESTION No. II (*b*) ASKED BY THE HON'BLE MR. K. B DUTT AT THE COUNCIL MEETING OF THE 6TH MARCH, 1912.

	Military Assistant Surgeons.	Civil Assistant Surgeons.
elimi n a r y ıfications.	Candidates for admission into the Indian Subordinate Medical Department, before they are admitted for training in the Medical College, are required to pass an entrance examination in the following subjects:— (*a*) *English.*—Composition (Marks are added to, or subtracted from, the total for spelling, handwriting, and punctuation.) (*b*) *History and Geography.*—The outlines of English and Indian History, and the elements of Physical and General Geography. (*c*) *Mathematics*— Arithmetic.—The four simple rules; Vulgar and Decimal fractions, Reduction; Practice; Proportion; Simple Interest; Extraction of square root; the Metric system. Algebra.—The four simple rules; Proportion; simple Equations; simultaneous Equations, and simple Problems. Geometry of points, lines, angles, and simple figures as covered by the first book of Euclid. (*d*) *Vernacular.*—Hindustani, colloquial.	Matriculation pass certificate of the Calcutta University.
of	In the case of the Military Assistant Surgeons, the course of study extends over four years as follows:— *First year.*—Anatomy (including Osteology and Dissection); Surgical Applied Anatomy; Physiology; Materia Medica; Chemistry, Outdoor Medical and Surgical Practice; Compounding and Dispensary Practice.	The Civil Assistant Surgeons are required to pass the M.B. or L.M.S. Examination of the Calcutta University. Under the new University Regulations, the L.M.S. Examination has been abolished, and the students are now required to pass only the M.B. Examination. The course of study extends over six years as follows:—

	Military Assistant Surgeons.	Civil Assistant Surgeons.
	Second year.—Anatomy and Dissections; Surgical Applied Anatomy; Physiology and Histology; Materia Medica; Pharmacy and Compounding; Chemistry and Practical Chemistry, Hospital Practice. *Third year.*—Medicine (systematic and clinical); Surgery (systematic and clinical); Ophthalmology; Post-mortems; Hospital Practice, medical and surgical, Dentistry and Dental Practice; Midwifery (lectures, practical demonstrations, attendance on labour cases), out-patients only. *Fourth year.*—Medicine, Surgery, and Operative Surgery; Gynæcology and diseases of children (lectures, and wards and out-patients); Pathology (lectures and practical work in laboratory); Hygiene (including vaccination); Medical, Surgical, Ophthalmic, and Obstetric Hospital practice; Medical Jurisprudence.	*First year.*—Physics, Chemistry, Zoology, and practical classes in a subjects. *Second year.*—Anatomy, Physiology, Medica, Practical Pharmacy, and tions. *Third year*—Anatomy, Physiology, Medica, Organic Chemistry, Di and Practical classes in Physiolo Organic Chemistry. *Fourth year.* Medicine, Surgery wifery, Pathology, Medical Jurispr Dental Surgery, Hospital Practi months.) *Fifth year.*—Medicine, Surgery, Mid Hygiene, Ophthalmic Surgery, O Surgery, Mental Disease, Practical logy and Bacteriology, Hospital (12 months.) *Sixth year.*—Hospital Practice (12 m For details of the syllabus, please se ter XLIV of the new University tions.
(3) Nature of the examination.	At the conclusion of each year's course the military pupils are examined under the direction of the Principal of the College in the subjects of study, and their progress therein is reported to the Director General, Indian Medical Service, who may, if he considers it expedient, remand an unsuccessful student to his studies for a definite period or issue orders for his removal from the College. At the conclusion of the Oral and Clinical examination in the subjects in the 4th year in which their practical knowledge is tested, the Principal of the College will report to the Director-General, Indian Medical Service, on their fitness for admission into the Indian Subordinate Medical Department. Those declared fit are then examined by written papers issued by the Director-General, Indian Medical Service, this examination being common to all the colleges and comprising the following subjects:—Medicine, Surgery, Midwifery, Pathology, Hygiene, and Materia Medica	*At the end of the 1st year class.*—I examination of the college for schol and medals of the college. Preli Scientific M B. examination of th cutta University. *At the end of the 2nd year class.*—(Test examination for promotion 3rd year class and for award of scholarships. *At the end of the 3rd year class.*—I examination of the college for schol and medals of the college. Firs examination of the Calcutta Univer *At the end of the 4th year class.*—Colle examination for promotion to t year class. *At the end of the 5th year class.*—I examination of the college. *At the end of the 6th year class.*—I M B examination of the C University.
(4) Requirements for promotion from grade to grade.	Subject to good conduct and efficiency, and in the case of 3rd class Military Assistant Surgeons, the passing of an examination as detailed below, a service of five years in the 4th class and of seven in the 3rd and 2nd class, respectively, shall entitle an Assistant Surgeon for promotion to the next higher class. Third class Military Assistant Surgeons before being eligible for promotion are required to pass an examination in Surgery and Surgical Applied Anatomy, Medicine, Materia Medica, Hygiene, Midwifery, Diseases of children, and acquaintance with regulations which govern military hospitals at any time before the 12th year of service. **The promotions of 1st class Assistant Surgeons to Senior Assistant Surgeon, with the honorary rank of Lieutenant, and of the latter to Senior Assistant Surgeon, with the honorary rank of Captain, are made by selection for ability and merit.**	In the case of the Civil Assistant Sur promotion from 3rd to 2nd grad from 2nd to 1st grade depends upo ing an examination after seven service in each grade. The subje the examination are as follows:— Medicine, Midwifery, Surgery and cal Jurisprudence. Promotions from 1st grade to the grade are made by selection for and merit.

The Calcutta Port (Amendment) Bill, 1912.

[*Mr. K. B. Dutt; Mr. Stephenson; Mr. Greer.*]

STATEMENT REFERRED TO BY THE HON'BLE MR. STEPHENSON IN HIS ANSWER TO QUESTION No. II (c) ASKED BY THE HON'BLE MR. K. B. DUTT AT THE COUNCIL MEETING OF THE 6TH MARCH, 1912.

Existing scales of pay drawn by Civil and Military Assistant Surgeons.

Civil Assistant Surgeons.	Per mensem.	Military Assistant Surgeons	Per mensem.
	Rs.		Rs.
3rd grade below 7 years ...	100	4th Class . .	85
2nd „ after 7 „ ...	150	3rd „	110
		2nd „ ..	150
1st „ „ 14 „ ...	200	1st „	200
Senior grade	300	Senior grade with the rank of Lieutenant ..	300
Civil Surgeon	350–30–500	Senior grade with the rank of Captain	400

A Military Assistant Surgeon above the rank of 3rd class, in independent medical charge of a Civil station, receives pay at the following monthly rates —

	Per mensem.
	Rs.
Under 5 years in charge	350
From 5 and under 10 years	450
„ 10 „ 15 „ .. .	550
Over 15 years	700

CHAIR OF ANATOMY IN THE MEDICAL COLLEGE.

The Hon'ble MR. K. B. DUTT asked:—

III. Will the Government be pleased to state what action, if any has been taken with a view to giving effect to the proposal foreshadowed by it in the course of the Budget discussions of 1909-10, that the chair of Anatomy in the Medical College would be bestowed upon a properly qualified private practitioner outside the I. M. S. *cadre*.

The Hon'ble MR. STEPHENSON replied:—

"It has been decided to appoint Dewan Hera Lal Basu Bahadur to the professorship of Anatomy in the Medical College."

THE CALCUTTA PORT (AMENDMENT) BILL, 1912.

The Hon'ble Mr. Greer in the absence of the Hon'ble Mr. Slacke, presented the Report of the Select Committee on the Bill further to amend the Calcutta Port Act, 1890.

The Hon'ble Mr. Greer also moved that the Report of the Select Committee be taken into consideration.

The motion was put and agreed to.

The Hon'ble Mr. Greer also moved that the Bill be passed

[*Mr. H. McPherson.*]

He said:—

"It seems unnecessary to delay the Council with any explanation of the terms of this Bill as they are fully set forth in the Statement of Objects and Reasons which has already been published. No amendment has been proposed, the Bill being exceedingly simple. It merely extends the powers of the Vice-Chairman in a reasonable manner and more clearly defines the powers of the Commissioners in dealing with expenditure."

The motion was put and agreed to.

THE ORISSA TENANCY BILL, 1911.

The Hon'ble Mr. H. McPherson presented the Report of the Select Committee on the Bill to amend and consolidate certain enactments relating to the Law of Landlord and Tenant in the districts of Cuttack, Puri and Balasore, in the Orissa Division

He said:—

"With your permission, Sir, I present the Report of the Select Committee on the Bill to amend and consolidate certain enactments relating to the Law of Landlord and Tenant in the districts of Cuttack, Puri and Balasore in the Orissa Division. The report is accompanied by a copy of the Bill as amended in Select Committee and by the Minutes of Dissent recorded by certain Members of the Committee.

"Although it might have been regarded as more satisfactory, if the Committee had presented a unanimous report, I hope that the Council will not be alarmed by the number or length of the Minutes of Dissent. They are a very common feature of reports on Tenancy Bills. The points of contact and adjustment between landlord and tenant in a complete Tenancy Code are so numerous that it would be surprising if the representatives of the many varying interests concerned came to a unanimous finding on all subjects of discussion. Complete unanimity might, in fact, be regarded with suspicion, as indicating that the examination of the Code had been hasty and superficial. There is no room for this suspicion in the present case. The Committee have held twelve sittings spread over a period of six weeks, and occupying an aggregate time of nearly forty hours. The clauses of the Bill were examined one by one, all the criticisms and suggestions of the local officers and local bodies were duly weighed, the discussions were conducted in a spirit of fairness which did credit to all who took part in them, and the various amendments which have been made in the Bill will, it is hoped, be considered to be improvements.

"It is not my purpose to occupy the time of the Council by going over the principles of the Bill once more, or by explaining the alterations that have been made in Select Committee, or by discussing in detail the Notes of Dissent that are appended to the report. It is sufficient for the present to say that the general principles of the Bill, which were fully explained in my speech of January the 9th, remain untouched, that most of the alterations which are set forth in the present report have been accepted unanimously by the Committee, and that the notes of dissent are concerned with not more than seven points which are of any real importance. These are—(1) the application of the Bill to the *killajat* estates, (2) the regulation of transfers of holdings, (3) the definition of proprietors' private lands, (4) the protection of communal lands, (5) the treatment of produce-rents, (6) the question of reclamation, and (7) the subject of maintenance of records. Amendments will doubtless be filed in respect of all these matters before the Bill comes on for consideration a fortnight hence, and the Council will then have full opportunity of considering the provisions of the Bill which deal with them. It would be premature to anticipate discussion at the present juncture, and it would also be out of order. What I wish to emphasise to-day, is that the mere existence of Notes of Dissent is in itself no argument for the motion which stands in the name of the Hon'ble Mr. Das. We expected them in the ordinary course of business, and we are prepared to discuss them when the proper time arrives."

[*The President.*]

The PRESIDENT said :—

"Before we proceed to the next business, and before I call on the Hon'ble Mr. Das to propose the motion which stands in his name, I feel obliged to call the attention of the Council to a point which I think is of some importance with reference to our procedure. In a leading article in the *Amrita Bazar Patrika* of the 5th March, which I have here before me, reference is made to the Hon'ble Mr. Das' motion, and from the article it appears that the Hon'ble Member's Note of Dissent, which has only this morning been laid upon the table as an integral part of the Report of the Select Committee, was thus communicated to the Editor of the paper before being laid before this Council. Now the proceedings of Select Committees have always, by the usage of this Council, been treated as confidential, and it is an innovation—and, in my view, an objectionable innovation—that anything which has formed part of them (whether a discussion during their session or a Minute of Dissent prepared after the close of their deliberations), should be communicated to the Press before the formal Report of the Committee is made public. We have never had any detailed rules laid down as to the procedure for Select Committees or the submission to Council of Notes of Dissent, but the custom that all Select Committee proceedings should be treated as confidential until such time as the Report of the Committee itself is laid before the Council has, so far as I am aware, never been infringed. I should be sorry if it should become necessary for us to alter our practice in this respect and to prescribe definite rules on matters of detail regarding the procedure of Select Committees; it would be much better that the uniform practice of the Council should be maintained. In the the present instance, the objection to the communication of the Hon'ble Member's Note of Dissent to the Press is enhanced by the fact that the Note of Dissent which he so communicated cannot,—as I shall now proceed to explain—be the same as that which has been incorporated with the proceedings of the Select Committee. For, in addition to what appears in the Note of Dissent laid before the Council this morning, the Hon'ble Member had included in his Minute a lengthy criticism of the constitution of the Select Committee and of the procedure followed by it, and I have been obliged to rule that this portion of the Minute can form no proper part of a Note of Dissent, and is out of order, and to direct that it should not be printed as part of the Committee's Report. So far as the Hon'ble Member criticised the constitution of the Select Committee, it appeared to me that he was entirely out of order in doing so, because the time for the discussion of the constitution of the Select Committee was when the Select Committee was appointed. When that stage had once been passed, the matter was not one for comment, so far as the Select Committee itself was concerned, though such constitution might perhaps furnish a reasonable ground for argument later on when the Bill is discussed in Council in detail. Certainly it should form no part of a Minute of Dissent upon the conclusions of the Select Committee. In the same way, but on rather different grounds, discussions of the procedure followed in Select Committee ought to find no part in a Note of Dissent which ought—as the name given to it implies—to be limited entirely to the conclusions arrived at by the Select Committee. The reason for that is,—as I have pointed out—that the proceedings of Select Committees are—according to the invariable practice of the Council—regarded as entirely confidential until their report is published. I do not wish to enlarge further on the point, but Hon'ble Members will at once appreciate the fact that, if the proceedings in Select Committee are not to be treated as confidential, then they must be conducted in an entirely different manner from that which is allowed at present; that is to say, everything that takes place will have formally to be put on record, and every Member must be given an opportunity of taking any objection that he thinks proper to what has been so put on record. It is thus more than probable that, in a controversial matter, very prolonged discussions might take place, and in fact that the whole procedure of working by Select Committees would be altered and rendered much more cumbersome and less effective than it is at present. I do not wish to be misunderstood. I have no wish whatever to limit the right of free speech in this Council, but that is

quite a different matter from a resort to personalities and other irrelevant matter in a Minute of Dissent. When any Hon'ble Member has any objection to the way in which the Select Committee has been formed or in which its business has been conducted, it is perfectly open to him to bring the whole matter before the Council for discussion when the Select Committee's Report is taken into consideration; but it is neither fair nor in accordance with the uniform practice of this Council for a Member to include matters of this kind in a Note of Dissent to which other Members, whose status, suitability or conduct may have been reflected upon therein, cannot, in the very nature of the case, have any opportunity of answering.

"I have thought it necessary to make this explanation, so that the somewhat unusual course which I have adopted in ruling that a portion of the Hon'ble Mr. Das' Note of Dissent is out of order may not be misunderstood."

The Hon'ble Mr. Das moved that the Bill to amend and consolidate certain enactments relating to the Law of Landlord and Tenant in the districts of Cuttack, Puri and Balasore in the Orissa Division, and the Report of the Select Committee thereon, be not considered in this Council.

He said:—

"Your Honour, I beg to be permitted to say a word in regard to the remarks which have fallen from Your Honour just now. I did not know that it was against the practice of this Council to make any remarks on the constitution of the Select Committee, or that the proceedings of these Committees were of a confidential nature. As far as I remember, though it is not possible for me to quote chapter and verse, there have been, as Your Honour remarked, instances where the constitution of the Select Committee was discussed in Council when the Bill and its provisions were being discussed. I do not like to say anything more on the subject beyond that I should be the last person to disregard a practice of an august body like this Council, if there was anything to make me believe or bring to my knowledge that such was the established practice. I cannot lay my hand now, but I have been very long in this Council, and I remember instances where notes of dissent had appeared in the public papers before they were brought into the Council, but I am sorry if I have violated this practice, and I beg to be excused for it, but it was not done with any intention to go against an established practice.

"The Hon'ble Member in charge of the Bill in introducing the Select Committee's Report said that it was not possible to avoid differences of opinion in a law which defines the relations between landlord and tenant. Land law includes in it the interest of every one who owns interest in land or lives on it. So consequently there must be points of contact and points of difference. I do not intend now to discuss in detail the provision of the law or rather the provisions of the Bill as to how far they secure or injure the interests of those who have interest in the land. I take for granted that Government intends to do a certain thing, but we know that Government has not at its command the time which is necessary for patient and careful deliberations and discussion on difficult points of law involved in a case like this. Therefore all that I intend to do on the present occasion is simply to show that the Bill in a most remarkable manner, and in the most important cases, fails to accomplish the object for which it is intended.

"The Bengal Tenancy Act was passed in 1885. It did not *proprio vigore* apply to Orissa, but power was given to the Lieutenant-Governor of Bengal to extend the whole or a portion of the Act to Orissa. The Act was framed to meet the condition of Bengal and Bihar at the time.

"If I were to attempt to show why the Bengal Tenancy Act could not apply, I should be trying the Council's patience. I shall therefore content myself drawing the attention of Hon'ble Members to the statement of the Hon'ble Mr. McPherson made in his speech when referring the Bill to a Select Committee—

'Surprise may be felt that it should not be possible to find salvation for Orissa in a Tenancy Act which was devised after years of deliberation and has proved sufficient for the

[*Mr. Das.*]

Great congeries of varying races included within the boundaries of Bengal. The reason is that, although power was taken in the Bengal Tenancy Act to extend its provisions to Orissa, the needs of Bihar and of Lower Bengal were alone considered in framing that enactment. *The peculiar conditions of Orissa were not taken into account.*"

In the fiscal and agrarian history of Bengal, Orissa occupies a unique place, *having features essentially different from those which distinguish the rest of the province.*"

"Here I have the good luck to agree with the Hon'ble Mr. McPherson. Hon'ble Members will please mark the words 'features essentially different.' I should add that Orissa is mostly temporaraly settled. Bengal and Bihar enjoy the boon of permanent settlement.

"In 1891 portions of the Act were extended to Orissa for making the Revenue Settlement of Orissa. The Acts and Regulations under which the previous Revenue Settlement had been made were considered unsuited.

"Chapter X of the Bengal Tenancy Act was first introduced for the purpose of revenue settlement. The main object the Government of India had in view in directing that the revenue settlement should be made under Chapter X of the Act was to secure an enhanced revenue; the other object was a classification of the tenancies according to the provisions of the Bengal Tenancy Act. The reason for this was that the classification was superior to that embodied in Act X of 1859 and if the record-of-rights were made during the revenue settlement on the basis of the laws in force in Orissa, the subsequent introduction of the Bengal Tenancy Act would be impossible. What was the result of this? The settlement operations began. If the Assistant Settlement Officer happened to be a Bengalee, who was familiar with the rights and interests which the Bengal Tenancy Act deals with, he found on the spot new rights which found no place in the Act. If the Assistant Settlement Officer happened to be an Uriya to whom the local rights in lands were familiar, he received no light from the Act. The Settlement Officer himself was no wiser. He moved the Government to extend some other portion of the Act, as occasions presented difficulties in the working of Chapter X of the Act. All groped in darkness. The Supreme Government supremely ignorant of the local conditions were the legally constituted guide. It was a case of blind leading those struggling in darkness. Sections after sections of the Bengal Tenancy Act were introduced as difficulties arose during the progress of the settlement operations. Experience of the degree of darkness which surrounded the responsible duties of the Settlement Officer led him to try new openings for additional light, but the additional light showed some more dark spot. Portions of the Act were extended from time to time to remove difficulties, but every new extension started unforeseen difficulties in another quarter. This process was carried on till the Government came to the conclusion that Orissa wanted a special Code adapted to its peculiar circumstances.

"The Settlement Officer did his work heroically just as the village barber performs all surgical operations with his rude nail-cutter.

"A child went with his parent to Bombay *en route* to England. He had heard that his journey to *Bilat* would be over the sea. When he saw the sea at Bombay, he said to his father, Papa *dekho bura Bilatee panee.* He had learnt the expression *Bilatee panee* in Calcutta, as that is the word used of ærated water. The child thought he saw a sea of ærated waters. This is what the Settlement Officers did.

'It is not necessary for my present purpose to give an exhaustive list of all instances of erroneous classification of rights in land. I shall just mention two instances.

"In the Bill, Hon'ble Members will find the word *bajiaftidar* defined in sub-clause (2) of clause 3 of the Bill. A *bajiaftidar* is a person whose claim to hold land revenue free was adjudicated under the old Regulation. Revenue was assessed on the lands in his possession. He did not pay rent to the zamindar, but he paid the Government revenue through the zamindar. So he was a

* The italics are the Hon'ble Mr. Das'.

proprietor, not a tenant. The Hon'ble Mr. Maddox in his letter No. A., dated the 6th April, 1909, in paper No. 2 regulating to this Bill says :—

'The *bajiaftidars* complain that they are by origin proprietors and not tenants. Historically this is true... .. The *bajiaftidars* are not therefore *by origin* at any rate tenants within the meaning of section 3 (*3*) of the Bengal Tenancy Act, because the person under whom they now hold does not *own** the *bajiafti* land.'

"But what status was given to this class in the settlement of 1899-1900?

Let me refer again to the Hon'ble Mr. Maddox. He says:

'In the settlement of 1899-1900 some of them have been recorded as tenure-holders and some as raiyats in accordance *with the provisions of the Bengal Tenancy Act.** The effect of this has been to reduce them to the position of tenure-holders and raiyats pure and simple more especially as their assets have been distributed exactly in the same way as those of other tenants. They have thus suffered material injury in the following ways:—

'Zamindars are now treating them as ordinary tenants, forbidding their transfers or only permitting their transfers on receipt of *salami*; where they are classed as tenure-holders, their raiyats can apply for commutation of produce rents, though they themselves depend on produce for their living or for their worship or for their charities; where they are classed as raiyats, they are tied down by the provisions of section 48 and cannot get more than 25 per cent. from their under-raiyats, in excess of the low rents which they themselves pay, except by registered agreement, and then only 50 per cent. in excess; and where their lands are acquired by Government, zamindars are resisting their claims to a substantial share of the award.'

"Those *bajiaftidars* are not by any means an insignificant class. They possess 21 per cent. of the total number of holdings, 17 per cent., that is $\frac{1}{6}$ of the cultivated area, and pay $9\frac{1}{2}$ per cent. of the assets. This is an instance of erroneous classification.

"I shall next refer to *nij-jote* or proprietor's private lands. The Hon'ble Mr. McPherson in his speech when referring the Bill to a Select Committee very lucidly explained that it was the object of the Bill to ear-mark proprietor's private lands and leave the remaining cultivated area as raiyati stock. In the former the raiyat cannot acquire right of occupancy, so long as they were let under a lease or year by year. In the latter the raiyat can always acquire a right of occupancy.

"It is admitted that during the Revenue Settlement under the Bengal Tenancy Act two words were used in recording the lands in actual possession of proprietors. These words were *nij-jote* and *nij-chas*. All lands in possession of tenure-holders were recorded as as *nij-chas*. This was done because section 116 of the Bengal Tenancy Act speaks of only proprietor's private land, and not tenure-holder. The most curious thing in this connection is that section 116 of the Bengal Tenancy Act was not extended to Orissa till 1906, *i.e.*, six years after the completion of the settlement. The law in force in Orissa was section 6 of Act X of 1859. That section protects the *nij-jote* lands of tenure-holders. That section says 'but this rule does not apply to *khamar*, *nij-jote* or *seer* belonging to the *proprietor of the estate or tenure.*'

"This distinction of *nij-jote* and *nij-chas* is arbitrary. The word *nij-chas* means lands cultivated by self, meaning the zamindar or tenure-holder himself.

"What they did in the Revenue Settlement of 1891-1900 was to record as *nij-jote* those lands which were recorded as such in the Revenue Settlement of 1838, and as *nij-chas* the remaining lands under the proprietor's actual cultivation.

"The total area recorded as *nij-jote* of proprietor's tenure-holders in 1838 was 88,700 acres."

The Hon'ble SIR BIJAY CHAND MAHTAB, MAHARAJADHIRAJA BAHADUR OF BURDWAN, said :—

"May I rise to a point of order, Sir. The provisions of the Bill, I understand, are to be discussed later on, but Mr. Das is discussing them now."

* The italics are the Hon'ble Mr. Das'.

[*Mr. Das; the President.*]

he Hon'ble Mr. DAS said:—

"My object, Your Honour, is just to show that the Bill as it stands raises uestions which defeat the very object which the Hon'ble Member says the ill has to secure. If Your Honour will allow me a little more time, I will ow that there is not time at the command of this Council to discuss this echnical point of law which has been raised, and I shall show conclusively at if the Government wishes to make any concessions by passing the Bill as stands, they will just do the reverse of what they intend to do, therefore y contention is that this Bill—there being no time at the command of this ouncil—should not be further considered in this Council."

he PRESIDENT said:—

"I have been waiting to try to grasp the relevance of the point which the on'ble Member has been discussing, and I have not so far been able to do . On his explanation I am willing to allow him to proceed, but I must mind him that his line of argument is apparently based on the fact that is Council will not be able to discuss the Bill, as there is so much to be scussed, and the line of now examining in detail everything that has to be scussed in this Council will take up its time rather unnecessarily. I think it ould be more to the point if the Hon'ble Member confines himself to showing hy the Council will not be able to discuss the Bill without going into the erits of the clauses."

he Hon'ble MR. DAS said:—

"It will thus be seen that the proprietor and tenure-holder were unlawlly deprived of their *nij-jote* lands. The Hon'ble Mr. McPherson calls is a generous concession to the land-owners of Orissa. All that is proposed be done is to change the word *nij-chas* to *nij jote*.

"I have given two instances, and with Your Honour's permission I would ke to show how large classes of people have been divested of their lawful ghts by the erroneous procedure of the Settlement Departments, how what as meant to be record-of rights has become in many cases record-of wrongs.

"I appreciate the generous desire to arrive at *status quo ante*. This aturally leads to the question, does the Bill provide the proper remedy?

"Those responsible for the drafting of this Bill had most difficult work fore them. My criticism of their work is not without an appreciation of eir difficulties.

"I do not think in the whole history of this Council there has been a Bill complicated in nature. The Bill tries to rectify mistakes done under a rong Act. Where the original Act did not apply, it was an illegality; where was applied by mistake, it was an irregularity. In some cases the errors ose from other causes. Sweeping denunciation of the whole work is not irable or practicable. The work before us is to preserve the general result the settlement, to make amends where injustice has been done, and to ame a self-contained Code for future guidance with the aid of experience in e past.

"Clause 163A of the Bill as altered by the Select Committee runs thus:—

'163A. (*1*) In temporarily-settled estates for which a record-of-rights has been prered and finally published under Chapter X of the Bengal Tenancy Act, 1885, between the ars 1891 and 1900 inclusive, and again between the years 1906 and 1912 inclusive, a oprietor's private land shall include—

(*a*) land which has been recorded as *nij-jote* in the record-of-rights prepared between the years 1906 and 1912, and

(*b*) land recorded as the *nij-chas* of a proprietor or sub-proprietor [other than a sub-proprietor referred to in sub-clause (*a*) of clause (*22*) of section 3] in the record-of-rights prepared between the years 1891 and 1900, which has again been recorded as his *nij-chas* in the record-of-rights prepared between the years 1906 and 1912.

(2) No land in a temporarily-settled estates which is not covered by sub-section (1) shall be held to be a proprietor's private land.'

"With regard to these *nij-chas* lands the Hon'ble Mr. McPherson in his speech said, the chief value of the change in fact will be that it will remove a fertile cause of dispute and strife about the lands. So there is dispute which means that right of occupancy is claimed in these lands.

"Suppose this Act were passed to-day, it cannot retrospectively affect the right of occupancy acquired during the period of 21 years—the interval between 1891 and 1912. The revenue settlement show the lands as other than proprietor's private land. They are cultivated through raiyats. How can clause 163A extinguish the occupancy right acquired before the date when this Bill is passed into law?

'Every statute, it had been said, which takes away or impairs vested rights acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability in respect of transactions or considerations already passed, must be presumed out of respect to the Legislature to be intended not to have a retrospective operation'—*vide Maxwell on the Interpretation of Statutes, 4th edition, page 323.*

'No rule of construction is more firmly established than this—that a retrospective operations is not to be given to a statute so as to impair an existing right or obligation otherwise than as regards matter of procedure'—*vide Hardcastle on Statutory Law, 3rd edition, page 353;* see also *Full Bench Decision, Jogadanand Singh* versus *Amarta Lal Sircar dated 1895, and Reid* versus *Reid, Volume VI, Ruling Cases.*

The PRESIDENT said:—

"The Hon'ble Member is still discussing the provisions of the Bill. We are not here to discuss them now. I am still waiting for his argument as to why the Council should not proceed with the business. It is not quite proper to enter into a discussion of the merits of the Bill which is not now before it."

The Hon'ble MR. OLDHAM said:—

"I do not wish in any way to interrupt the Hon'ble Member. But I think Sir, he raises a point of principle which at this stage is not permissible, and therefore he is out of order."

The PRESIDENT said:—

"I think the ruling which I have given will suffice. He is out of order in discussing the details of the Bill."

The Hon'ble MR. DAS said:—

"One of the principal objects of this Bill is to restore to certain people whose interests have been affected by the Settlement Department.

"If Your Honour wishes the people to understand that Government has most honorably come forward to restore to them what they had lost by the mistake of their officers, let us not proceed any further with this Bill. The people of Orissa will ever remain grateful to Your Honour for the intention which has now been put on record. How to give effect to that intention requires further deliberation, and a little more help of that contemptible class called lawyers than the Bill seems to have received. There is no time for that in this Council. Orissa will be more thankful to your Government for the intention than for the Bill enacted into law. The Government of the new Province will exactly understand the situation, and having more time at its command will give effect to the intention. If, on the other hand, it is the latent wish of Government to deprive permanently these men of their rights and give legislative sanction to what was done through ignorance and mistake, pass the Bill as it stands. I cannot believe that it is the intention of Government to give the zamindars and *bajiaftidars* some concession which the law

[*Mr. Oldham; the President; Mr. Das; Maharajadhiraja Bahadur of Burdwan.*]

courts will subsequently pronounce as delusive. It is admitted that the interests of these classes have suffered. It is proposed to compensate them for the injury they have suffered. Let not the compensation be dubious in the least. Let it not be given in a form which will drive these men to litigation. Let it not be given in a form which will leave the ultimate decision to law courts. If the decision of courts be adverse, Orissa will lose all faith in the British Government, and Your Honour's name will be associated with the breach of faith by the British Government with a people whose ancestors invited the British to occupy the Province."

The Hon'ble MR. OLDHAM said :—

"I rise to a point of order, Sir. I submit that the Hon'ble Member is still discussing a question of principle, which is not in order at this stage.

The PRESIDENT said :—

"I think the Hon'ble Member is now in order in arguing why the Bill should not be proceeded with."

The Hon'ble MR. DAS said :—

"The other matter to which I beg to refer is that there is in the Bill a most contentious matter, that is the maintenance of land records, and that is a thing which is opposed by everybody. In fact the District Judge opposes it. We wanted to have before the Select Committee a letter which had been written by the Divisional Commissioners on the subject, but we had not the advantage of seeing that letter. This work has been carried on for some time in Orissa. I do not understand why Orissa should have been selected as the field of experiment.

"The Hon'ble Mr. McPherson hopes that this Bill should form the parting gift from Bengal. Bengal cannot give what she has not; there are many provisions in the Bill which Bengal has not been burdened with. The provision about communal land, the transfer of right of occupancy, the provisions about reclaimed waste land and the maintenance of land records, these the most contentious portions of the Bill do not exist in Bengal. It is not correct to say that it would be a parting gift from Bengal. Bengal cannot give what it has not. It might be a parting gift from the old Bengal Government.

"The people have always enjoyed the reputation of being peaceful and peace-loving. Orissa is called the holy land of India. Though situated within a few hours journey from Bengal, there was no sedition in Orissa. There never has been any agrarian disturbance like those in other parts of the country under this Government. No commission was ever appointed to inquire into the strained relation between zemindars and raiyats. There is one Sessions and District Judge in the whole Province, and only one Sub-Judge. What have we done that before handing us over to the new Government it is the intention of this Government to give us the worst character. In the *Mahabharat* there is a transfiguration of Krishna. He appeared once transfigured. It was a monstrous figure, standing on three legs and holding the Sudarsan Chakra, the emblem of Almighty destructive power in the right hand. Of the three legs, one was of a tiger, the second of a horse and the third of an elephant. The tail was the expanded hood of a cobra. A lion's body and peacocks neck completed the figure.

The Hon'ble SIR BIJAY CHAND MAHTAB, MAHARAJADHIRAJA BAHADUR OF BURDWAN said :—

"May I say that Hon'ble Mr. Das should not discuss religious matters here"

[*The President; Mr. Das; Raja Rajendra Narayan Bhanja Deo.*]

The PRESIDENT said:—

"He is only citing this by way of illustration."

The Hon'ble MR. DAS said:—

"It was the combination of all destructive powers available in creation with an attractive front as the peacock's neck has. That is the character of this Bill. Of the destructive power of the Bengal Government, Orissa need not be reminded. The famine of 1866 and the floods which followed it carrying away more than a million people need not be supplemented by additional proofs of the power of Government. Why then this combination of all that is oppressive in Bombay, Madras, Chota Nagpur, Bengal and East Bengal. The Bill combines all these. Is Orissa a land where the worst characters of all parts of India find refuge.

"If this Bill is passed Your Honour will hand us over to the new Government as the worst portion of the people under Your Honour's Government. I believe this Government has done enough injustice to Orissa. How we shall fare under the new Government is yet unknown, but we believe that His Majesty's wishes and object in placing us under the new Government is to secure to Orissa a greater share of Government attention. But when making over Orissa, Your Honour makes over also an Act more stringent in its provision than are to be found in any other part of the country under your Government; the natural inference of the new Government will be that Orissa contained most turbulent people in the new Province.

"I beg to draw the attention of the Hon'ble Member in charge of the Bill and Your Honour to the principle which was enunciated by the Hon'ble Mr. Greer at the last meeting of this Council, that it would not be proper for this Council to discuss the Budget because there are members here who will shortly have nothing to do with Bihar and Orissa, and they have no right to discuss the income and expenditure, of these places. On the contrary if Bengal has no right to discuss their income and expenditure, so also they have no right to legislate about the destinies of millions of people just before handing them over to the new Province. With these remarks, Sir, I beg to move that the further consideration of the Bill be postponed."

The Hon'ble RAJA RAJENDRA NARAYAN BHANJA DEO said:—

"With your permission, Sir, I beg to support the motion proposed by the Hon'ble Mr. Das. In doing so I have no intention of going into the details of the Bill. I support the motion on general grounds.

"On the 9th January I moved the motion that stood in the name of the Hon'ble Mr. Das to stay all further proceedings in connection with this Bill. Your Honour was pleased to say that it would be open to me to get the Bill postponed or take any other steps after the Select Committee submitted their report, and accordingly I withdrew the motion.

"The present Bill is practically a reproduction of the Bengal Tenancy Act of 1885. A few sections have been altered to suit the conditions of Orissa. It retains most of the sections of the Bengal Tenancy Act; many of these were unsuitable, and therefore were not extended to Orissa. The Bill adopts some provisions from the Chota Nagpur and the East Bengal Tenancy Acts.

"In some matters in regard to which no legislation has yet been thought necessary in Bengal, East Bengal or Chota Nagpur, it is proposed to legislate for Orissa on principles adopted in the Bombay and the Madras Presidencies. In regard to other matters in the Bill, the principles followed could not be found anywhere in India.

"The result is that the Bill retains most of the sections of the Bengal Tenancy Act which are disadvantageous to the landlords, and provides a few more which are intended to curtail their existing rights.

[*Raja Rajendra Narayan Bhanja Deo.*]

"The Hon'ble Member in charge of the Bill justly observed the other day hat 'although power was reserved in the Bengal Tenancy Act to extend its provisions to Orissa, the needs of Bihar and Lower Bengal were alone consilered in framing that Act The peculiar condition of Orissa was not taken nto consideration." In spite of this remark most of the sections which are insuited to Orissa are embodied in the Bill. The Hon'ble Member in charge ives the following reason :—

'I take it for granted that I am generally precluded from discussing he sections of the Bengal Tenancy Act which have been embodied naltered in the present Bill, though in my opinion they may be open to bjection and call for amendments on general grounds. It would arouse pposition and delay passing of the measure if they are brought to he front at present. The preferable course is to let these comm n sections ass unchallenged, and to consider later whether the amendment of he Bengal Tenancy Act, the Chota Nagpur Tenancy Act and the Orissa Tenancy Act (when passed), in any particulars that are common to them, s desirable.'

"I do not see the force of this argument, when after experiences of more han a century the present Government have found that special legislation s required for Orissa, why such special legislation should not be made, and why the objectionable sections of the Bengal Tenancy Act preserved? In he words of the Hon'ble Member this is done only to prevent delay Yet, when introducing the Bill, the Hon'ble Member in charge said, that 'in deciding o take up the Bill in the present Session, Government has no desire to rush he Council' Here we have a Bill. It is admitted it contains portions of he Bengal Tenancy Act which demand alteration; but they have been adopted n their present state and why? Because there is not enough time to discuss ow far and why they should be altered This alone is a sufficient reason why this Council should not proceed any further with this Bill. Orissa can ery reasonably and pertinently demand an agrarian Code to suit her peculiar onditions, and not a Code made up of provisions borrowed from different arts of India. But the Bill is of the latter description.

"Legislation should be made to suit the conditions of the locality and to reserve all rights and interests of the people, and not that the conditions of ach locality be disturbed and made to adapt themselves to a piece of egislation foreign to the locality. The duty of a Legislature should be to make aws for men as they are, and not to make men for laws as they exist in other arts. To be short, laws should be made for men, and not men for laws.

"From the above facts and many others we fear that it is the intention of he Government to rush the Bill through before Orissa is placed under the new Government. I do not consider it is doing justice to Orissa for the present Government to hurry through this piece of legislation of such vital importance gainst the wishes of the people and their representatives who voice them ere. The people of Orissa will feel it more keenly as, after the announcement f His Imperial Majesty at Delhi, separating them from Bengal, they aturally expect that their interests will be more carefully considered under he new Government.

"The newly nominated member from Orissa in this Council questioned the orrectness of my information that the people of Orissa were opposed to have his Bill dealt with by the present Council. I anticipated such remark from he Hon'ble Member. Since then I have reasons to believe the wish of the eople on this matter has been communicated to Government by Associations. he two Hon'ble Members who represent the Muhammadan community of Orissa will, I hope, agree with me that the Bill should be postponed.

"It has been said that there are in this Council zamindars who have interests n Orissa, and this is shown as a reason that the Bill ought to be passed in this Council. To this all I can say is that legislation should be on territorial and ot on personal grounds. In the present case the claim on personal ground as received due attention in the constitution of the Select Committee, and the ork of the Select Committee will receive its due weight when the question is

taken up by the new Government. No doubt their interests in Orissa will be safeguarded by their representatives in the other Council, and it will be open to the other Government to take in any gentleman whose advice they will consider helpful to the passing of this Act.

"There may be a few, non-official members who will still advocate passing the Bill in this Council, and the non-official opinon may not be unanimons. But we are on the eve of an administrative dissolution. Unanimity in this Council has lost its weight. The principle which ought to guide Your Honour's Government at this critical time was enunciated the other day in the Hon'ble Mr. Greer's announcements about the budget estimate for 1912-13. The principle applies with greater force in the matter of this Bill. The budget estimate covers the income and expenditure of one year; the Bill before this Council involves the destiny of millions of people extending over at least many years. The budget estimate controls the power of Government over funds at the disposal of Government; the Bill deals with rights belonging to the people.

"Apart from all other considerations, the legal difficulties raised by the Hon'ble Mr. Das are sufficient grounds to postpone this Bill, so that these difficulties will receive proper attention in future. With these remarks I beg to support the motion put by the Hon'ble Mr. Das.

The Hon'ble SIR BIJAY CHAND MAHTAB, MAHARAJADHIRAJA BAHADUR OF BURDWAN said:—

"I am sorry to have to oppose this motion, and I shall state my reasons very clearly in doing so. In the first place however I must say that I am more disappointed with the Hon'ble Mr. Das's speech than I thought I would be before he spoke. The Hon'ble Mr. Das has brought in *Belati panis* and all sorts of other things. I do not think my Bihari friends would object to *Belati pani* as much as they would terms like *chanmaaars*, *bajaftdars*, *sarbarakkars*, *shikmi khariladar*, *kharida jamabandidar*, etc. Probably this would be more *Belati pani* to them than the *Belati pani* the Hon'ble Mr. Das spoke of. What I wish to point out in this connection is that one of the arguments the Hon'ble Mr. Das advanced was that Orissa being temporarily settled, this Bill should not be taken up in this Council. Now if I had known that Bihar was also temporarily-settled, I could have followed his line of argument; but like Bengal, Bihar is also permanently-settled, therefore that ground falls through. Then again he has said that because the budget cannot be discussed for reasons very clearly stated by the Hon'ble Mr. Greer, we should not pass this Bill. But, I think, Sir, that this argument is very irrelevant like most of the things the Hon'ble Mr. Das has said to-day. The Hon'ble the Raja of Kanika has remarked, and I am surprised at his remark, that personal rather than territorial interests were represented on the Select Committee, and argued that the Hon'ble Maharaj Kumar Hrishikesh Laha and myself were put in there only to safeguard personal interests, but we being territorial magnates as well, it cannot be said that territorial interests were not represented, and therefore I do not see how the question of territorial and personal interests comes in.

"I should like to mention one other point. If I knew that the vested interests of Bihar were in any way going to suffer by this Bill being passed now, I for one should certainly have moved that this Bill should be postponed till the new Council of Bihar came in. We find that no vested interests of Bihar will suffer. On the other hand, this agrarian Code belongs to a part of the new Province which will be self-contained. The Uriyas certainly may get one or more representatives upon the new Council, but I do not think that this is a sufficient ground for delaying the passing of this Bill now. Moreover, if the Maharaj Kumar Hrishikesh Laha and myself were put in to protect personal interests, there were on the Select Committee the Raja of Kanika, the Hon'ble Mr. Das, and the Hon'ble Babu Janaki Nath Bose, and Government officials who have had personal experience of the working of the agrarian

[*Mr. Maddox; Maharaj-Kumar Gopal Saran Narayan Singh; Maulvi Saiyid Muhammad Fakhr-ud din.*]

ode in Orissa, and in my opinion are most fitted to be on the Select Committee, nd that in itself is another ground on which we should take advantage of their xperience in Orissa in passing this Bill here.

"Of course, Sir, we have heard the song of the dying swan about Orissa eing maltreated by Government and the request that we should not put an xtra burden on it just when it was going to be put under a new regime.

"While I certainly wish my Oriya friends success in the new Province, I do ot think that it is fair either to the Government or the people in this Province, ho have been excellent friends in the past, to make such an assertion. I am orry that the Hon'ble Mr. Das's motion, and particularly his arguments, are so rivolous and I think that if the Council be seriously minded, it should throw out at once."

he Hon'ble MR. MADDOX said:—

"Sir, I wish to oppose the motion. The attack, if I may call it, of the on'ble Mr. Das affects me in three ways, as Settlement Officer and as the atter of the original Bill which was considered and so much improved by the elect Committee; and also as a Member of the Select Committee. I would sk the Council, if they would take it from the Hon'ble Mr. Das that injustice ad been done at the time of settlement, considering that all the Hon'ble Mr. Das' evidence had been taken from my reports, to accept my opinion that e Bill, as at present framed, remedies these defects and sets right these njustices.

"There is only one other point which I should like to mention. There is o rushing through of this measure. Since November 1908, all these atters have been carefully considered by the people of Orissa and by officers ho have discussed these matters with them in Orissa, and this is nearly a eriod of 3½ years."

he HON'BLE MAHARAJ-KUMAR GOPAL SARAN NARAYAN SINGH said:—

"Your Honour, I desire to support my hon'ble friend Mr. Das's proposition at the Report of the Select Committee be not considered by this Council. e are on the eve of the dissolution of this Council. His Imperial Majesty as accorded to Bihar and Orissa a separate Government. In the new overnment the claims both of Bihar and Orissa will have a larger ance and a greater scope than, while we continue to be tied up to, ir powerful neighbours of Bengal. In all human probability our untrymen of Orissa will be better represented in the Council of the new rovince than they are here. Why, then, not let the new Council take up is question? It has been pointed out on the Government side that official xperience of Orissa happens to be very well represented in this Council. e it so. But legislation of this order cannot be safely undertaken without strong tinge of the non-official element also. And the non-official element annot be said to be well represented either in this Council or in the Select ommittee, as is pointed out by the Hon'ble Mr. Das in his Note of Dissent, which he has supplied us with a private copy.

"Lastly, it has not been made out that there is any great urgency in this easure. Nothing very reprehensible could happen if this measure is not assed this time but is taken up, say, a year from now. For these reasons beg to support the motion of my hon'ble friend that the Report of the Select ommittee be not considered by the Council."

he Hon'ble MAULVI SAIYID MUHAMMAD FAKHR-UD-DIN said:—

"Your Honour, on the 9th January last, when the constitution of the elect Committee was taken up by Your Honour for consideration, the Hon'ble aja Rajendra Narain Bhanj Deo moved the motion which originally stood in e name of the Hon'ble Mr. M. S. Das, and I had the good luck of supporting at motion. My chief reason for supporting that motion was that, after the nouncement made by His Imperial Majesty the King-Emperor at Delhi that rissa will form part of the new Province of Bihar and Chota Nagpur and that e new Province will be created very shortly, if the consideration of the Bill

be postponed till after the creation of the new Province to be considered by the new Legislative Council of Bihar, it would be very satisfactory. Your Honour suggested a very good and conciliatory scheme to let the Report of the Select Committee come forward before this Council, and if, at that time, any members should think that it is not satisfactory the members of the Council will then be at liberty to move for the postponement of the consideration of this Bill by this Council. Of course, I have not had the opportunity of examining what changes have been made by the Select Committee; nor am I personally aware what discussions took place in the Select Committee, and how far the changes made by the Select Committee are satisfactory, but what I have heard to-day from the Hon'ble Mr. Das shows that the people of Orissa are not satisfied with the Report of the Select Committee, and therefore they want further time to consider the provisions of the Bill in the new Council. Whatever defects may be in the existing law by which Orissa is at present administered so far as the landlords and tenants are concerned, if the same defective law be made applicable to it for a few months more, there would not be much harm done, and there is no reason why this Bill should be taken up in a hurry, and should be passed into law. With these few words, I beg to support the motion of the hon'ble Mr. Das."

The Hon'ble KHAN BAHADUR MAULVI SARFARAZ HUSAIN KHAN said:—

"Your Honour, before coming to the Council and after reading the Hon'ble Mr. Das's Note of Dissent, I thought I would support his motion. But after having heard his arguments as well as the arguments advanced by other Hon'ble Members, I do not at all feel convinced that this Council is not competent to pass this Bill. I do not also think that Orissa will fair better than it is now, if the Bill is taken up for consideration in the new Council. I do not quite follow the reasons advanced in favour of postponing the passing of this measure. I am sorry therefore that I cannot support the Hon'ble Mr. Das's motion. If I support it at all, it would be upon grounds of sentiment as a Bihari which I do not wish to do. For these reasons, Your Honour, I oppose this motion."

The Hon'ble BABU JANAKI NATH BOSE said:—

"Mr. President—I very much regret that I cannot support the motion of my hon'ble friend Mr. Das. I have listened to his speech very attentively, and to the speeches that were delivered in support of his motion, but I cannot find any reason whatsoever as to why this Council is not in a position to deal with this measure effectively. It will not serve any useful purpose now for me to answer the questions of law raised by my friend, but it will suffice for me to say that this motion of the hon'ble Mr. Das does not seem to be in consonance with the feelings or convictions of the people of Orissa. Up to this moment, I have only heard that a telegram has been received from the Orissa Landholders' Association asking this Council not to proceed further with this Bill, but there are other Associations in the Province and we do not find any representation to that effect from any of them, and there are people in Orissa who can hold public meetings and mass meetings if necessity arises, but no such meeting has been held up to this moment to give expression to their feelings, that this Council will be unable to do justice to this measure.

"Assuming for the sake of argument that my friend's contention is right, that the settlement records prepared in 1898 and 1899 were not quite accurate and that some of the entries might have interfered with the vested rights of landlords and tenants, we ought to see whether this Council can do anything to right the wrongs, if I may say so, or put the law on a sound basis. To my mind it has always seemed that the gentlemen who were connected with the settlement of Orissa and who had to work up the agrarian law in that Province, are the best fitted to right the wrongs and to place the statutory law on a safe and sound basis. Your Honour knows very well Act X of 1859 was the law of Orissa from the year 1859. For over 50 years it has been the rent law of Orissa. The subsequent introductions of the Bengal Tenancy Act made the rent law of Orissa somewhat

anomalous and uncertain. This working of two statutes side by side might have given rise to anomalies and some cause of complaint, and the responsible officers of the Government of Bengal also thought it best to remove these anomalies and uncertainties; and after years of deliberation in which the public was taken into confidence, we have got a decent piece of legislation with which I think this Council will deal, not hurriedly but will take time and properly discuss the questions that will be raised by my hon'ble friend. I do not see the slightest advantage in this Bill going before the Council of Bihar, because Your Honour knows that this Bill will then be before legislators who will be for some time to come quite unacquainted with the land-tenures of that province, and the special interests of the people of Orissa. My friend's contention is that the people who are best fitted to deal with this measure should be deprived of the power of doing that, but that the Bill should have a chance of going before people who perhaps are not acquainted or will not be soon acquainted with the essential features of land tenures, and who will not feel so much sympathy with the people of this province as this Council would naturally feel.

"I am really sorry, Sir, that a remark which was unfortunately made by the Raja of Kanika at the meeting of the 9th January has been repeated. He said that the Government of Bengal was guilty of injustice to the people of Orissa. Of course, my friend the Raja of Kanika is a young man, and I did not think it worth my while to answer his accusation; but I do not think that I shall allow this opportunity to pass without entering my solemn protest against an accusation like this.

"On the other hand, I have been in the province for about a quarter of a century, and I have seen that Orissa has all along been treated like a pet child. The return that child now gives is to accuse this Government of gross injustice. Your Honour, I think that the people of Orissa do not want that this Bill should be dealt with by another Council. I do not see any advantage in postponing the discussion of this Bill by this Council, and I do not think that this Council will rush this Bill through without proper deliberation. From the experience I have had of the Select Committee, I am convinced that matters brought before the Committee were properly discussed, and representations made by the members of the Committee were given proper attention to. Therefore I am very sorry to oppose this motion of the Hon'ble Mr. Das."

The Hon'ble BABU MAHENDRA NATH RAY said :—

"Sir, I am sorry I cannot support the motion of the Hon'ble Mr. Das to the effect that this Council should not take up the consideration of this Bill. I speak from my experience as one who has to deal with rent law cases of Orissa that the present condition of the rent law in that part of the country is extremely unsatisfactory. I agree with the last speaker (the Hon'ble Babu Janaki Nath Bose) that the working side by side of the old rent law (Act X of 1859) with portions of the Bengal Tenancy Act extended to that Division from time to time—not to the whole Division but to some of the districts—has left the law relating to landlords and tenants in such a unsatisfactory state, that sooner the uncertainties are removed, the better. I believe the Hon'ble Mr. Das cannot gainsay the position that it is necessary that the agrarian law should be put upon a better footing; and the question is whether that is to be done by the present Council or by the new Council of Bihar and Orissa. I do not see, Sir, why the accumulated experience and the wisdom of a number of members of this Council beginning from you, Sir, should be lost in the matter of the revision of the Rent Law applicable to Orissa; nor do I see why the large mass of materials which has now been collected and which is available for the purpose of giving a good Rent Law to Orissa should be altogether lost. There is no doubt that the adequate consideration of the measure will require time, and I do not know how long we are destined to exist here or when we should be extinguished, but that is a matter which, I suppose, is not known to many of us here. Assuming that we have still a month's time to live—a month's time I should consider would be sufficient to enable us to see whether the recommendations made by the Select Committee should be allowed to stand as

they are or adopted with proper modifications. It will then be time for the Hon'ble Mr. Das to bring in his objections about *nij-jote* and *nij-chas*—a very delicate distinction which I was trying to follow with all the power that I could command. It would then be for the Hon'ble Mr. Das to see whether the position of the *bajiaftidars* may be improved or not. But all this is no reason why so much experience and so much material should be thrown away in order that the Council of the new Province may begin with the solution of very difficult questions—a solution which is urgent in view of the very unsatisfactory condition of the rent law that prevails in Orissa. With these few words, I beg to oppose the motion of the Hon'ble Mr. Das.

The HON'BLE MR. MCPHERSON said :—

"Sir, I oppose the motion which has been proposed by the Hon'ble Mr. Das. I should like to explain briefly the point of view of Government with regard to it. In my speech of 9th January I explained to the Council why it had been decided then to proceed with the Orissa Tenancy Bill in the present session. I pointed out that the Bill was the fruit of many long years of consideration and that the present Council has exceptional advantages in dealing with it, because it includes in its midst an extraordinarily large number of members—official and non-official—who are intimately acquainted with Orissa or have special interests in Orissa. If the Bill be passed in the present session, it will have the benefit of their assistance and advice. If it be postponed, it will, to a very great extent, be robbed of this advantage. I also pointed out that the tenancy law of Orissa has been before the public of Orissa for the last six years—ever since, in fact, the Revision Settlement was started—that an influential local committee was consulted in 1909 by the Hon'ble Mr. Maddox before the Bill was drafted, and that since its publication, in July of last year, it has been circulated for opinion to local officers and local bodies. The Bill was thoroughly considered by them and has, indeed, been the chief subject of conversation in Orissa since its publication. We have had valuable opinions and suggestions from all these local officers and local bodies, and we have given them most patient consideration in Select Committee for the last six weeks. The Bill is now ripe for consideration in Council, and it seems to me to be pure procrastination to suggest that the proceedings shall be stopped at the present stage and the Bill be handed over for disposal to the Legislature of the new province.

"There can be no reasonable doubt that, had there been no administrative changes announced in December last, the Bill would have been taken up in the ordinary course of business during the present session, would have been passed by the present Council, and would have been welcomed by all classes of the Uriya community. What magic is there in the Delhi announcements that appeals to the supporters of this motion? If the Bill be postponed on their account, we stand to gain nothing and to lose much. We lose the advice and assistance of many who know Orissa well, and the result is the postponement for one or two years of a much needed legislative measure which is on the very threshold of completion. The administrators of the new province have before them the stupendous task of organizing the new administration. We shall cast an intolerable burden on them if we leave this legislation to them. It is no question of a few months more or even of a year more. There will be inevitable delays on account of references to the superior powers, re-introduction of the Bill, republication for public criticism, fresh consideration in Select Committee, and it is safe to prophesy that at least two more years will pass before Orissa gets the Tenancy Code of which it stands so much in need. Meanwhile the present settlement staff, whose services are required to give effect to certain provisions of the Bill, will be disbanded. It will be necessary in particular to reconsider the privileged land provisions of the Bill, because we shall be unable to act without inquiry on a record that is two to five years old. The detailed inquiries into the facts of possession which I deprecated in my speech of 9th January will be unavoidable, will necessitate the employment of a special staff, and will stir up a lot of strife and dispute which it was the object of clause 163, as amended, to avoid.

[*Mr. Das.*]

"It may be admitted that if the Bill is left over for the new Council, the new Council will have more time for its consideration. It may take five years or even ten years over it. But what I ask is, can the people of Orissa afford to wait longer for this legislation. They are crying out for the adjustment of their tenancy laws, and it will be a real misfortune to them if they are kept waiting longer.

"I must confess that I am puzzled to understand the attitude of mind of the Hon'ble Member who has proposed this motion. We have been told by him, in season and out of season, that Orissa is a distressed and afflicted country, which has never been treated fairly by British administrators One of its chief troubles, we are told, is that in tenancy matters it has been coupled up with Bengal to its grievous disadvantage Although we may not subscribe to the dark and gloomy pictures that have been drawn of Orissa's past history by the Hon'ble Member, and although we claim some credit to British administration for its splendid achievements in Orissa, for the peace and order which were evolved after the dark days of Mahratta misrule, for the careful administration of its revenue and civil law by a succession of distinguished Collectors and Judges, for the care and industry with which its land records have been prepared, for its canals and its embankments, its roads and its railways, and the general diffusion of prosperity that has followed in the wake of these great public works, we do admit that some confusion has resulted in the tenancy law of Orissa from the joint application to it of Act X of 1859 and portions of the Bengal Tenancy Act. We have made an honest attempt to remove this confusion and to clear up various points of difficulty and dispute that have arisen between landlord and tenant. We believe that we have the sympathy of the great mass of the population—landlords and tenants alike in carrying through this proposed legislation, and we fail to understand why this beneficient work should be stigmatized by the Hon'ble Member as an additional grievance. In whose interest, I would ask him, is this delay proposed? If he professes to speak for the landlords of Orissa, I can only say that I have come in contact with many of them, and that all have assured me of their desire to see a self-contained Tenancy Code provided for Orissa with the least possible delay. There may be a section of the landlords who have been made acquainted with the proceedings of the Select Committee and fancy that they may fare better if the Bill be reconsidered in the new Legislature. They remind me of litigants who apply to the High Court for transfer of their cases, when the evidence has been recorded, the arguments of counsel have been heard and fear is entertained that judgment will be unfavourable.

"If it is on behalf of the raiyats that the Hon'ble Mover professes to speak, I claim to know at least as much as he does regarding the wants and requirements of the Orissa raiyats. The revision operations of the last six years have brought its officers into close contact with all the agricultural classes, and the Council may rest assured that the interests of the cultivators of the soil have not been overlooked.

"For these reasons and for those that have been advanced by my hon'ble colleagues on the Council, I oppose the motion for postponement and strongly recommend that the Council take the Report of the Select Committee and the Bill as amended into consideration at the next meeting of the Council."

The Hon'ble Mr. Das said:—

"Your Honour, the speeches that have been made by those gentlemen who have opposed my motion, had been apparently made on a supposition that I was opposed to have an agragian Code, a self-contained law, containing all that is necessary to govern the relations between the different classes having interest in land. I am not at all opposed to it. All that I say is that the interests are of such a nature, and owing to there being these anomalies as regards the application of the different Acts in the province, there have been so many difficult questions to be solved, that it is not possible for this Council, unless this Council's lease of life has been extended by anything which is not known to the public, to do justice to this question. The

Hon'ble Mr. Maddox has said that he has brought to the notice of the public certain irregularities which were made. No doubt he has done that. I certainly admire the Hon'ble Member's straightforwardness in doing that, and not only that but also his solicitude that some compensation should be made to those whose interests have been affected by the mistakes of the Settlement Department is worthy of anybody's admiration; but then, Sir, the man who makes a mistake is no doubt the person who can tell us as to where the mistake has been made, and no doubt his suggestions as regards how the mistake can be remedied are valuable, but the question, when he becomes the sole arbiter of the situation assumes a dubious form. I really admire the Hon'ble Mr. Maddox coming forward boldly and saying that these people should be compensated, just as I would admire the courage of a doctor, who had been operating by mistake in such a way as to injure a vital part, to say that he had made a mistake, but while certainly I would follow his advice: I would say, 'I will not allow you to be the arbiter of the situation; it is much better that your work should be judged by others.' A good deal has been said that the volume of work, which has been gained by the application and labour of men who have known Orissa so well, should not be thrown away. I am sure none of it will be thrown away. They have all been put on record, and consequently they will pass on to the next Government. That is altogether an erroneous argument.

"Another objection is that this Council has Hon'ble Members who are so well acquainted with Orissa, and the next Council might not have men who are likely to possess the same knowledge about the affairs of Orissa. That may be so, but the administration of Orissa is about to be made over to a new Government. It is not known what policy that Government would adopt with regard to the administration of Orissa. Are we not sitting here actually to decide what policy that Government should adopt when we undertake to legislate a measure which effects the interests of millions of people—a most important measure regarding an agrarian population of millions. How should we know that that Government would actually like the idea of importing legislative enactments which are not to be found anywhere in the neighbourhood, but are to be found in Madras, Bombay and in the theories of those gentlemen who have been drafting this Bill.

"Then the Hon'ble Member in charge of the Bill has spoken for the raiyats. I can very well understand that. When a raiyat has been making his *salam* to a Settlement Officer in the mufassal, and when the raiyat found that the Settlement Officer deprived another of his rights, and made it over to him, he would naturally show confidence in the Settlement Officer. Of course, if the Settlement Officers admit that they have done irregularities, it is no wonder that they would please some people. The Hon'ble Member in charge has claimed to be the raiyat's friend. This claim is put forward by an official. But I suppose the poor raiyat knows the real sympathy of the official when he remembers the official treatment he gets in times of famine and floods.

"Then, Sir, it has been said that the Government of Bengal has treated Orissa like a pet child, and therefore we expect the best things from this Government. I do not know whether this is the theory which the Government of Bengal entertains. That theory has not been entertained by His Gracious Majesty. If His Gracious Majesty thought that the Bengal Government had treated Orissa as a pet child, certainly this administrative change would not have been brought about. Let me state to Your Honour that when the Bengal Tenancy Act was passed, though it was contemplated that this would be introduced into Orissa at some future date, no man from Orissa was allowed a seat in this Council.

"I may also remind the Council that all Acts that have been passed in this Council with regard to Orissa have been passed without anybody representing Orissa on this Council.

"The Bengal Tenancy Act was amended on two or three occasions for the purpose of carrying out the revenue settlement in Orissa; there was no seat

[*Mr. Das.*]

allowed to a member from Orissa. I know for certain that even on that occasion nobody was appointed to this Council by nomination. The only instance when there has been a nomination to this Council is the present one, when Government thought it fit to bring in by nomination the public prosecutor of the land, to prosecute a people give them a bad name and a bad law, just before handing them over to the new Government with a bad character.

"I do not know exactly what time this Council has at its command for passing this Bill. Certainly, I should have been the last person to object to this Bill being considered in this Council, if I knew that the time at its command was sufficient for the purpose. Of course, Your Honour knows best. If I were allowed to discuss the principles of this Bill, I could point out to Your Honour that there were mistakes even in the definition. If all that is to be gone through, either the Council must be rushed or attention cannot be paid to what are called 'legal objections' raised by the contemptible class called lawyers. If we do not pay attention to the suggestions of that contemptible class, the result will be whatever may be the intentions of Government, the law courts will not look to the intention of the Government, and the Government might find that after all its intentions have not been given effect to,—then there will be necessity of legislating again; and that is the danger ahead of us. I do not think that I should take up Your Honour's time any more, but I submit respectfully that if the people of Orissa understood what is good for them, if the people knew what their rights were, then certainly these mistakes which were done by the Settlement Department—unsettlements made by settlement—should not have been allowed. The question is, do the intelligent people,—do the people who understand the provisions of the enactments, do the people who appreciate the Hon'ble Mr. McPherson's generous concessions,—do these people bearing in mind the concessions which Government intends to make,—do these people think, after they have read the Bill and the form in which it is proposed to be passed, that this law should be the best suited for their purposes. I should like to know what lawyers have been consulted on this point. Certainly in a legislation of this kind lawyers must have a voice. I was going to discuss certain things and to point out that these provisions will never do, but of course Your Honour ruled that I was going beside the point. It was not therefore possible for me to show how the irregularities and the mistakes which are to be found in the Bill have been remedied.

"The Hon'ble Babu Mahendra Nath Ray said that he found that there were anomalies, and he said that he had special acquaintance with the Tenancy Act. Of course I do not know the nature and the extent of his experience, but I found that he was arguing certain points which were perhaps new to him, as the Hon'ble Maharajadhiraja Bahadur of Burdwan said certain words in the Bill would be strange to the Bihar gentlemen in the new Council. They may be so. The whole administration of Orissa will be strange to the new Council. But this is not for us to decide. I believe that at least we will have this advantage, that the new Government will look at it from an outsider's point of view and judge the work of the Settlement Officer as an outsider would do, and not be influenced by such opinions as have been put forward by people who are responsible no doubt for the mischief done, and who now say that the mischief is to be corrected in this way.

"With these few remarks, Sir, I beg to put the motion to the vote."

A division was then taken, with the following result:—

Ayes—9.	*Noes—31.*
The Hon'ble Maharaj-Kumar Gopal Saran Nrarayan Singh.	The Hon'ble Raja Kisori Lal Goswami.
" Raja Rajendra Narayan Bhanja Deo.	" M. R. T. Greer
" Mr. Golam Hossein Cassim Ariff	" Mr. D. J. Macpherson.
" Dr. Abdullah-al Mamun Suhrawardy	" Mr. C. J. Stevenson-Moore
" Mr Saiyid Wasi Ahmed.	" Mr. E. P. Chapman.
	" Mr. B. K. Finnimore.
	" Mr. C. A. White.

The Hon'ble Maulvi Saiyid Muhammad Fakhrud-din.
" Mr. K. B. Dutt.
" Rai Sheo Shankar Sahay Bahadur
" Mr. M S. Ilas.

The Hon'ble Mr. J. H. Kerr.
" Mr H. L. Stephenson.
" Mr. S. L. Maddox.
" Mr. B C. Mitra.
" Mr. S. W. Küchler.
" Mr. L. F. Morshead.
" Sir Frederick Loch Halliday.
" Mr. J. G Cumming.
" Mr. C. E. A. W. Oldham.
" Mr. H. McPherson.
" Maharaja Bahadur Sir Prodyot Kumar Tagore.
" Sir Frederick George Dumayne.
" Babu Bhupendra Nath Basu.
" Babu Janaki Nath Basu.
" Sir Bijay Chand Mahtab Maharajadhiraja Bahadur of Burdwan.
" Maharaja Manindra Chandra Nandi.
" Mr. J. G. Apcar.
" Mr Norman McLeod.
" Mr. F. H. Stewart.
" Mr. W. J. Bradshaw.
" Babu Hrishi Kesh Laha.
" Maulvi Saiyid Zahir-ud-din.
" Babu Mahendra Nath Ray.
" Khan Bahadur Maulvi Sarfaraz Hossain Khan.

The following members were absent :—

The Hon'ble Mr. F. A. Slacke.
" E. W. Collin.
" Mr. J. H. E. Garrett.
" Kumar Sheo Nandan Prosad Singh.
" Rai Sitanath Ray Bahadur
" Lieut.-Col. G. Grant Gordon.
" Babu Kirtanand Sinha
" Babu Deba Prasad Sarbadhikari.
" Mr D. J. Reid.
" Rai Baikuntha Nath Sen Bahadur
" Babu Braja Kishor Prasad.
" Mr. Dip Narayan Singh.
" Babu Bal Krishna Sahay.

The result of the division was, ayes 9, noes 31, and the motion was therefore lost.

The PRESIDENT said :—

"Under rule 22 (*1*) of the rules for the conduct of legislative business the period of notice for amendments in the case of the Orissa Tenancy Bill which will be taken up at the next meeting of Council will be seven days. Amendments on this Bill should, therefore, reach the Secretary to the Council not later than 11 A.M. on the 13th March."

[*Mr. Cumming.*]

THE BENGAL MINING SETTLEMENTS BILL, 1911.

The Hon'ble Mr. Cumming presented the Report of the Select Committee on the Bill to provide for the sanitation of Mining Settlements in Bengal.

He said:—

"SIR, I beg leave to present the report of the Select Committee on the Bengal Mining Settlements Bill. In doing so, I should like to recall to Hon'ble Members the peculiar circumstances which gave rise to the legislation. The Bill is primarily in the interests of the labouring classes at work in the coal mines, and secondarily in the interests of the mining industry. It was only after every possible measure under other Acts had been tried and had failed that recourse was had to special legislation. The Indian Mining Association had complained, and with justice, that whatever sanitary precautions might be taken by any coal mine owner, these might all be nullified by the inaction of a neighbour, who might be free from any control under the Mines Act; and so the Bill was designed to create in selected areas a local sanitary authority, on which both mine-owners and royalty receivers should be represented, with power to deal with such and similar cases and to exercise general sanitary control.

"The opinions which have been received since the Bill was introduced showed that it was defective in several respects; and in Select Committee considerable alterations have been made, the more important of which are mentioned in the report which is in the hands of Hon'ble Members. The principle kept in view is that the Bill should be as elastic and flexible as possible, in view of the diverse nature of the tracts in which the law may hereafter be put in force. To one objection which has been made that the Bill is not suitable for dealing with a large water-supply scheme, such as is contemplated in the Jharia coalfield, the answer is that the Bill was not designed to cover such a scheme.

"The crux of the whole Bill is the financing of the Mines Board of Health which may be created in selected areas to be termed Mining Settlements. It is not unfair that the expenses should be borne by those connected with the mining industry; but the difficulty was to find a common denominator between the charges on the coal mine-owners and the charges on the royalty receivers. It was at first proposed in consultation with the Indian Mining Association that the charges should be levied from both classes in proportion to the road-cess paid; this seemed a simple and intelligible method of calculation. But the mine-owners pay road-cess on profits, while the royalty receivers pay on output. It follows that, if in a particular mine there was no profit on the working, the mine-owner would pay no road-cess; and hence would not contribute at all to the sanitary charges. So the Committee of the Indian Mining Association suggested that the output of mines should also form a basis for calculation. The Select Committee after obtaining statistics thought that the fair apportionment between the two classes as a whole would be nine-tenths to mine-owners and one-tenth to royalty receivers; and further that amongst mine-owners themselves the assessment should be according to output and amongst royalty receivers according to road-cess. But, while trusting that in the beginning the above proportion between the two classes may be maintained, the Select Committee have considered that the proportion between these two classes should be fixed from time to time by Government.

"I should like to take this further opportunity of expressing the thanks of Government to the Indian Mining Association for the part which they have taken throughout in advancing this legislation."

The Council was then adjourned to Wednesday, the 20th March, 1912, at 11 A.M.

A. W. WATSON,

Offg. Secy. to the Bengal Legislative Council.

CALCUTTA;

The 12th March, 1912.

B. S. Press—20-3-1912—3791J—500—S. C. R.

Proceedings of the Council of the Lieutenant-Governor of Bengal assembled for the purpose of making Laws and Regulations under the provisions of the Indian Councils Acts, 1861 to 1909 (24 & 25 Vict., c. 67, 55 & 56 Vict., c. 14, and Edw. VII., c. 4).

THE Council met in the Durbar Hall at Belvedere on Wednesday, the 20th March, 1912, at 11 A.M.

Present:

The Hon'ble SIR FREDERICK WILLIAM DUKE, K.C.I.E., C.S.I., Lieutenant-Governor of Bengal, sub. *pro tem*, *presiding*.

The Hon'ble MR. F. A. SLACKE, C.S.I., *Vice-President*.

The Hon'ble RAJA KISORI LAL GOSWAMI.

The Hon'ble MR. R. T. GREER, C.S.I.

The Hon'ble MR. D. J. MACPHERSON, C.I.E.

The Hon'ble MR. E. W. COLLIN.

The Hon'ble MR. C. J. STEVENSON-MOORE, C.V.O.

The Hon'ble MR. E. P. CHAPMAN.

The Hon'ble MR. B. K. FINNIMORE.

The Hon'ble MR. J. H. KERR, C.I.E.

The Hon'ble MR. H. L. STEPHENSON.

The Hon'ble MR. S. L. MADDOX, C.S.I.

The Hon'ble MR. G. W. KUCHLER, C.I.E.

The Hon'ble MR. L. F. MORSHEAD.

The Hon'ble SIR FREDERICK LOCH HALLIDAY, Kt., M.V.O., C.I.E.

The Hon'ble MR. J. G. CUMMING, C.I.E.

The Hon'ble MR. C. H. BOMPAS.

The Hon'ble MR. C. E. A. W. OLDHAM.

The Hon'ble MR. H. MCPHERSON.

The Hon'ble BABU JANAKI NATH BOSE.

The Hon'ble MAHARAJA BAHADUR SIR PRODYOT KUMAR TAGORE, Kt.

The Hon'ble SIR FREDERICK GEORGE DUMAYNE, Kt.

The Hon'ble KUMAR SHEO NANDAN PRASAD SINGH.

The Hon'ble BABU BHUPENDRA NATH BASU.

The Hon'ble RAI SITA NATH RAY BAHADUR.

The Hon'ble LT.-COL. G. GRANT-GORDON, C.I.E.

The Hon'ble SIR BIJAY CHAND MAHTAB, K.C.S.I., K.C.I.E., I.O.M., MAHARAJADHIRAJA BAHADUR OF BURDWAN.

The Hon'ble MAHARAJ-KUMAR GOPAL SARAN NARAYAN SINGH.

The Hon'ble BABU KIRTANAND SINHA.

The Hon'ble RAJA RAJENDRA NARAYAN BHANJA DEO.

The Hon'ble BABU DEBA PRASAD SARBADHIKARI.

The Hon'ble MR. J. G. AFCAR.

The Hon'ble MR. NORMAN MCLEOD.

The Hon'ble MR. F. H. STEWART, C.I.E.

The Hon'ble MR. GOLAM HOSSEIN CASIM ARIFF.

The Hon'ble MR. SAIYID WASI AHMAD.

The Hon'ble MAULVI SAIYID MUHAMMAD FAKHR-UD-DIN.

The Hon'ble BABU HRISHIKESH LAHA.

The Hon'ble MAULVI SAIYID ZAHIR-UD-DIN.

The Hon'ble MR. D. J. REID.

The Hon'ble RAI SHEO SHANKAR SAHAY BAHADUR

The Hon'ble MR. MADHU SUDAN DAS, C.I.E.

The Hon'ble RAI BAIKUNTHA NATH SEN BAHADUR.

The Hon'ble KHAN BAHADUR MAULVI SARFARAZ HUSAIN KHAN.

OATH OR AFFIRMATION OF ALLEGIANCE.

The Hon'ble Mr. Bompas made the prescribed oath of his allegiance to the Crown.

QUESTIONS AND ANSWERS.

NEW BUILDING FOR THE PATNA COLLEGIATE SCHOOL

The Hon'ble MAULVI SAIYID MUHAMMAD FAKHR-UD-DIN asked :—

I. (*a*) Is the Government aware that the term of the lease of the house which is rented for the accommodation of the Patna Collegiate School at Bankipore expires within a few months?

(*b*) Is the Government aware that the owner of the house has declined to renew the lease?

[*Mr. Kerr; Maulvi Saiyid Muhammad Fakhr-ud-din; Mr. Stevenson-Moore.*]

(*e*) Will the Government be pleased to state whether it has made any arrangement for the location of the Patna Collegiate School elsewhere after the expiry of the term of the present lease?

(*d*) If so, will the Government be pleased to state what arrangement has been thought of?

(*e*) Will the Government be pleased to state whether it has already made any provision in the Budget for the construction of a building for the Patna Collegiate School?

(*f*) If not, will the Government be pleased to state whether this matter has been kept in view in preparing the Educational Budget for the new Province of Bihar?

The Hon'ble MR. KERR replied:—

(*a*) & (*b*) "Government is aware that the term of the lease of the house, which is rented for the accommodation of the Patna Collegiate School at Bankipore, expires on the 31st July, and that the owner has declined to renew the lease.

(*c*) & (*d*) No arrangement has yet been made for the location of the school after the 31st July, but the Inspector of Schools is endeavouring to secure a suitable house for the temporary use of the school.

(*e*) & (*f*) No provision has been made in the budget for 1912-13 for the construction of a building for the Patna Collegiate School. The selection of a suitable site has been under consideration, but must be left over for the decision of the Government of the new province of Bihar and Orissa."

PRESIDENT OF THE BENCH OF HONORARY MAGISTRATES AT BARH.

The Hon'ble MAULVI SAIYID MUHAMMAD FAKHR-UD-DIN asked:—

11. (*a*) Will the Government be pleased to state whether a Junior Honorary Magistrate has been appointed President of the Bench in the Barh sub-division of the Patna district, in preference to a Senior Honorary Magistrate with second class powers? If so, will the Government be pleased to state the reason for such appointment?

(*b*) Will the Government be pleased to state whether any, and, if so, what special qualification is necessary for such an appointment?

The Hon'ble MR. STEVENSON-MOORE replied:—

(*a*) "The present President of the Bench of Honorary Magistrates at Barh was appointed in 1903 and has ever since performed the duties satisfactorily. He was vested with second class powers and the power to sit singly in 1909. It is true that there is another Honorary Magistrate who has exercised similar powers since 1901, but in 1903 it was decided that he was less well qualified for the post of President than the Honorary Magistrate who was then appointed to it and has now held it for more than eight years.

(*b*) The rule under which Presidents are appointed is as follows:—

'The Chairman of the Bench for the time being shall be the Magistrate of highest powers present at a sitting. Where two or more are of equal powers the Bench may elect its own Chairman, provided always that it shall be in the discretion of the Magistrate of the district to appoint the Chairman for each time of sitting, or generally.'"

DECLARATIONS UNDER SECTION 61 OF THE CODE OF CIVIL PROCEDURE (ACT V OF 1908).

The Hon'ble MAULVI SAIYID MUHAMMAD FAKHR-UD-DIN asked:—

12. (*a*) Has the attention of the Government been drawn to section 61 of the Code of Civil Procedure (Act V of 1908)?

[*Mr. Kerr; Maulvi Saiyid Muhammad Fakhr-ud-din; Mr. Stevenson-Moore.*]

(*b*) Will the Government be pleased to state whether it has made any declaration, as permitted under the above section, either by general or by special order?

(*c*) If not, does the Local Government propose to take early steps in that behalf?

The Hon'ble MR. KERR replied:—

(*a*) "Government is aware of the provisions of section 61 of the Code of Civil Procedure. Its attention has not been specially drawn to them by any one except the Hon'ble Member.

(*b*) No declaration has been made by Government under the section.

(*c*) The subject will be noted for the consideration of the new Government, but this Government is unable to commit it to any kind of action."

APPLICATIONS UNDER SECTION 158A OF THE BENGAL TENANCY ACT, 1885 (VIII OF 1885).

The Hon'ble MAULVI SAIYID MUHAMMAD FAKHR-UD-DIN asked:—

IV. (*a*) Will the Government be pleased to state whether any application under section 158A of the Bengal Tenancy Act (VIII of 1885) has been presented by any landlord in this Province?

(*b*) If so, how many such applications have been filed, in what areas, and with what result?

The Hon'ble MR. KERR replied:—

(*a*) & (*b*) "Since section 158A of the Bengal Tenancy Act* was passed in 1907, eight applications have been received by Government for the extension of the section to different estates. Of these estates, one was in Champaran, one in Monghyr, one in Gaya, one in Shahabad, one in Jessore, one in Patna and two in Muzaffarpur. All the applications were refused by Government, because the necessary conditions were not fulfilled."

APPOINTMENT OF BIHARIS IN THE SECRETARIAT OF THE NEW PROVINCE.

The Hon'ble MAULVI SAIYID MUHAMMAD FAKHR-UD-DIN asked:—

V. (*a*) Will the Government be pleased to state whether applications have been invited from Biharis for appointment in the Secretariat of the new Province?

(*b*) If so, will the Government be pleased to state whether the Divisional Commissioners of Bihar, Chota Nagpur and Orissa have been authorised to invite such applications and to enrol the names of suitable candidates?

The Hon'ble MR. STEVENSON-MOORE replied:—

"The attention of the Hon'ble Member is invited to the reply given to Questions VII (*b*) to (*e*) on the same subject which were put by the Hon'ble Babu Braj Kishor Prasad at the Council meeting of the 26th February last."

APPOINTMENTS IN THE SUBORDINATE JUDICIAL AND EXECUTIVE SERVICES IN BIHAR, CHOTA NAGPUR AND ORISSA.

The Hon'ble MAULVI SAIYID MUHAMMAD FAKHR-UD-DIN asked:—

VI. (*a*) Will the Government be pleased to state the number of appointments which will be available for Munsifs, Subordinate Judges, Deputy Magistrates and Sub-Deputy Magistrates in Bihar, Chota Nagpur and Orissa separately?

* *i.e.*, Act VIII of 1885.

[*Mr. Stevenson-Moore; Mr. Golam Hossain Cassim Ariff; Mr. Saiyid Wasi Ahmad.*]

(*b*) Will the Government be pleased to state how may Biharis and Uriyas are serving in Bihar, Chota Nagpur and Orissa, and how many in other parts of Bengal?

The Hon'ble Mr. STEVENSON-MOORE replied:—

(*a*) & (*b*) "The Hon'ble Member is referred to the reply to be given to Question No. VIII (*a*) to (*g*) to be asked by the Hon'ble Mr. Saiyid Wasi Ahmad."

FORMATION OF NEW *CADRES* FOR THE NEW PRESIDENCY OF BENGAL

The Hon'ble Mr. GOLAM HOSSAIN CASSIM ARIFF, on behalf of the Hon'ble Dr. ABDULLAH-AL-MAMUN SUHRAWARDY asked:—

VII. (*a*) Will the Government be pleased to state what principles are being followed in determining the position of individual officers of—

(*i*) the Indian Civil Service,

(*ii*) the Provincial Executive Service, and

(*iii*) the Subordinate Civil Service, respectively, in the *cadres* which are to be formed for the Presidency of Bengal?

(*b*) Has the attention of the Government been drawn to the fact that in recent years promotion has been more rapid in Eastern Bengal and Assam than in this Province, with the result that a large number of officers serving in Eastern Bengal have attained to higher grades than their seniors in service in this Province?

(*c*) Is the Government aware that if, in the new Presidency *cadre*, the officers in Eastern Bengal referred to in question (*b*) are allowed to retain their present grade, it will greatly retard the promotion of many officers in this Province who are senior to them in service, and who, in some cases, will have little chance of promotion in future?

The Hon'ble Mr. STEVENSON-MOORE replied:—

"The difficulties to which the Hon'ble Member has drawn attention have been experienced in arranging the division of the *cadres*. Officers of the Indian Civil Service will be placed according to their relative seniority before the 1905 partition or, if appointed subsequently, according to the India Office list. With regard to the Provincial Civil Service and the Subordinate Executive Service, no officer will loose grade promotion already given, but within their own grades officers appointed prior to the 1905 partition will be placed in the same relative seniority as before. This principle will, however, admit of exceptions due to success or failure at the departmental examinations, to special promotion, etc. The position to be taken on promotion by officers thus placed in grades lower than their juniors will be a matter for decision as each individual case arises."

APPOINTMENT OF BIHARIS IN THE VARIOUS SERVICES IN THE NEW PROVINCE.

The Hon'ble Mr. SAIYID WASI AHMAD asked:—

VIII. (*a*) Has the attention of the Government been drawn to the following passage in the despatch of the Government of India, dated the 25th August, 1911, and published in the Gazette of India Extraordinary, dated the 13th December, 1911?:—

"The cry of Bihar for the Biharis has frequently been raised in connection with the confirment of appointments, an excessive number of offices in Bihar having been held by the Bengalis."

(*b*) If so, will the Government be pleased to state whether it intends to allot to Biharis as many posts as are practicable in the various services in the new Province?

[*Mr. Stevenson-Moore.*]

(*c*) Will the Government be pleased to state the number of gazetted appointments held by Bihari and Uriya officers in the various services under the present Government of Bengal?

(*d*) What will be the total number of such appointments in the various grades required for the new Province of Bihar, Chota Nagpur and Orissa?

(*e*) Will the Government be pleased to state how many of the appointments, ordinarily reserved for members of the Civil Service and open to members of the Provincial Service, will be allotted to Bihar?

(*f*) It appears from the Civil List that 217 Deputy Collectors are serving in the five Divisions which will form the new Province of Bihar. In other words about two-thirds of the total number of Deputy Collectors, serving at present in the Province of Bengal, are employed in Bihar. Will the Government be pleased to state whether it intends to observe at least the same proportion in allotting posts of different grades to Bihar?

(*g*) Will the Government be pleased to state whether it intends to move the High Court to observe the same principle with regard to the Judicial Service?

The Hon'ble MR. STEVENSON-MOORE replied:—

(*a*) "The answer is in the affirmative.

(*b*) Practically all the Biharis and Uriyas already in service have been allotted to the new province. The selection of any additional officers who may be required to fill vacancies is not within the competence of this Government.

(*c*) A statement which gives the information required for the Executive and Judicial branches of the Provincial Civil Service is laid upon the table. If the Hon'ble Member so desires, a supplementary statement for the Gazetted officers of other Departments will be furnished.

(*d*) The total number of officers in the various grades of the Executive Branch of the Provincial Service in Bihar and Orissa will be approximately as follows:—

First grade	4
Second "	5
Third "	12
Fourth "	36
Fifth "	53
Sixth "	54
Seventh "	59

Similar information for the Judicial Branch is not yet available.

(*e*) No final decision has yet been arrived at with regard to the allotment of appointments reserved for members of the Civil Service but open to members of the Provincial Service.

(*f*) & (*g*) Government follows the principle of making the allotment of Provincial Service officers to the two new provinces with due regard to the number of posts actually to be filled in each."

STATEMENT REFERRED TO BY THE HON'BLE MR. STEVENSON-MOORE IN HIS ANSWER TO QUESTION NO. VIII (*c*), ASKED BY THE HON'BLE MR. SAIYID WASI AHMAD AT THE COUNCIL MEETING OF THE 20TH MARCH, 1912.

Number of Bihari and Uriya Deputy Magistrates and Deputy Collectors, Subordinate Judges and Munsiffs.

Deputy Collectors ...	Biharis	72
	Uriyas	21
Subordinate Judges ...	Biharis	1
	Uriya	Nil.
Munsiffs	Biharis	45
	Uriyas	2

[*Rai Baikuntha Nath Sen Bahadur; Mr. Stephenson; Mr. Kerr; Babu Bhupendra Nath Basu; Mr. Chapman.*]

STEEPING OF JUTE IN THE RIVERS SITUATED WITHIN THE LIMITS OF THANA JHIKARGACHA, IN THE DISTRICT OF JESSORE.

The Hon'ble RAI BAIKUNTHA NATH SEN BAHADUR asked:—

IX. Will the Government be pleased to state what action has been taken on the representation submitted on the 23rd September 1911, by Babu Jogendra Nath Ghose of Ballah, in which that gentleman protested against the steeping of jute in the rivers situated within the limits of thana Jhikargacha in the district of Jessore?

The Hon'ble MR. STEPHENSON replied:—

"The petition was sent to the Commissioner of the Presidency Division, as the matter is primarily one for the consideration of the local officers, and they should be applied to before such a matter is referred to Government."

APPOINTMENT OF A JUNIOR OFFICER AS ADDITIONAL INSPECTOR OF SCHOOLS IN THE PRESIDENCY DIVISION.

The Hon'ble RAI BAIKUNTHA NATH SEN BAHADUR asked:—

X. (*a*) Is the Government aware of the circumstances which have led to the temporary appointment of a comparatively junior officer to the post of Additional Inspector of Schools in the Presidency Division?

(*b*) If not will the Government be pleased to inquire into the matter and consider the claims of the officers superseded?

The Hon'ble MR. KERR replied:—

(*a*) "It is presumed that the Hon'ble Member is referring to the case of Babu Sripati Mukherji, who has recently been appointed officiating Additional Inspector of Schools in the Presidency Division. Government is aware of the circumstances which led to that appointment.

(*b*) Three officers were superseded in the appointment, of whom two had already been passed over for ordinary grade promotion on account of unsatisfactory work, while the third was on his third extension of service and was not considered suitable for the post. Government does not propose to take any further action in the matter."

ANTICIPATED DIVISION OF THE *CADRE* OF THE PROVINCIAL JUDICIAL SERVICE.

The Hon'ble BABU BHUPENDRA NATH BASU asked:—

XI. (*a*) Has the attention of the Government been drawn to the article which appeared in the editorial columns of the *Bengalee* of the 5th March, 1912, regarding the anticipated division of the *cadre* of the Provincial Judicial Service?

(*b*) Is the Government aware that, if that division follows the lines of the existing *cadre*, the proportion of Subordinate Judges to Munsiffs in the new Province of Bihar will apparently be 1 : 3·4, while in Bengal it will be 1 : 5·8?

(*c*) Will the Government be pleased to state what steps are being taken to equalise the prospects of Munsiffs in Bengal with those in Bihar in the matter of their eventual appointment to the post of Subordinate Judge?

The Hon'ble MR. CHAPMAN replied:—

(*a*) "The answer is in the affirmative.

(*b*) & (*c*) The Government is in correspondence with the High Court regarding the formation of separate *cadres* for Bengal and Bihar. The points referred to by the Hon'ble Member have received and will continue to receive careful consideration."

[*Mr. H. McPherson.*]

THE ORISSA TENANCY BILL, 1912.

3. The Hon'ble Mr. H. McPherson* moved that the Report of the Select Committee on the Bill to amend and consolidate certain enactments relating to the Law of Landlord and Tenant in the districts of Cuttack, Puri and Balasore in the Orissa Division be taken into consideration.

He said :—

"I do not propose to weary the Council or to waste its time by going over the Bill once more, or by explaining the amendments that have been made in the original Bill by the Select Committee. These have been set forth clearly in the Report and will come under discussion when the amendments in Annexure A are taken up. In view of the proceedings at our last meeting, when a motion to the effect that "the Bill and the Report of the Select Committee thereon be not considered in this Council" was lost by an overwhelming majority, I take it that the present motion is purely formal and will be passed as a matter of course."

The motion was put and agreed to.

4. The Hon'ble Mr. H. McPherson also moved that the clauses of the Bill be considered in the form recommended by the Select Committee.

He said :—

"This also is a formal motion which has been accepted in anticipation by the Hon'ble Members who have moved amendments to the various clauses of the Bill. I will not detain the Council, except to make a few general remarks regarding the amendments that have been filed. They are 268 in all. Hon'ble Members will not, I hope, be appalled by their number. Many of them are duplications, many are formal and consequential, and many, I hope, will be withdrawn,† when it is explained that they are based on misapprehensions. Nearly one hundred have been put in by Hon'ble Members from Bihar and it is difficult to understand what is the cause of the lively interest that has been taken in the Bill by them. All the debatable ground of the Bill has been covered by the amendments filed by the Orissa members, and, if I may be allowed to use a homely phrase, the Orissa members are old enough to take care of themselves and do not appear to require the helping hand of their Bihar brethren. Where the Bihar amendments do not cover the same ground as the Orissa amendments, they betray an imperfect acquaintance with the local conditions of Orissa, which must be almost embarassing to those whom they are professedly designed to help. If the Bihar amendments be deducted, and also those amendments which are either identical or consequential, the number which calls for serious consideration will be found to narrow down to about 100 and to centre round the five or six points which I mentioned at our last meeting as the principal subjects of the notes of dissent filed by members of the Select Committee. These are—(1) the registration of transfers of tenures and occupancy-holdings, (2) the provisions regarding proprietors' private lands, (3) the treatment of produce-rents, (4) the assessment of reclaimed lands, (5) the protection of communal lands, and (6) the maintenance or periodical revision of records. The first of these alone has more than 60 amendments attached to it, and, I am glad to say that, with regard to it, we have found a solution ‡ which is considered satisfactory by the members chiefly concerned, and which, if accepted by the Council, will obviate a lot of tedious discussion.

"With this preliminary explanation, which I hope will be received with relief by Hon'ble Members, I will ask the Council to accept the present motion and pass on to a consideration of the amendments in detail."

The motion was put and agreed to.

---

* The Hon'ble Mr. McPherson was the member in charge of the Bill, but was assisted in his duties at various stages by the Hon'ble Mr. Kerr, the Hon'ble Mr. Cumming, and the Hon'ble Mr. Chapman.

† Only 80 amendments were actually debated.

‡ See the Hon'ble Member's speech on pages 87 and 88.

[*Mr. M. S. Das.*]

Clause 3.

* The Hon'ble Mr. M. S. Das moved that the following be substituted for clause 3 (2), namely—

"*Bajiafti* lands mean lands, the title to hold which on special terms of revenue assessment having been declared invalid by the Cuttack Land Regulation of 1805, the Bengal Land-revenue Assessment (Resumed lands) Regulation, 1819, or the Bengal Revenue Free Lands Regulation, 1825; the said lands were assessed in the course of a settlement of land-revenue at a *jama* fixed for the term of that settlement.

"*Bajiaftidar* means a holder of *bajiafti* land, who was recorded in the record-of-rights published under Chapter X of Act VIII of 1885† between the years 1891 and 1900, or between the year 1906 and the commencement of this Act, as a *bajiafti* tenure-holder or *bajiafti* raiyat according as he cultivated the lands through tenants or cultivated them himself."

He said:—

"Sir, before I proceed to refer to the amendment, I shall, with Your Honour's permission, just speak two or three sentences with regard to the remarks which fell from the Hon'ble Member in charge of the Bill. He complains that the Bihar members are taking a lively interest in the provisions of the Bill; for the duty of fighting or being slain by the Hon'ble Member in charge of the Bill should devolve on two members 'who can take care of themselves.' I cannot say that both of them are old enough to take care of themselves. With regard to my present amendment, Sir, we are not fighting for anything which Government does not like to give or the people like to have. We are agreed as to what should be given. The only point of difference between us is how it should be given, and the form in which it should be given. I contend that the form in which the remedy to *bajiaftidars* is proposed to be given in the Bill will not pass the right actually. It will remain a dubious point to be decided afterwards by the Courts, and Courts, Sir, are after all Courts of Law, and nobody can possibly predict what the decision of a Court will be on a particular point of law. Therefore my contention in this Council is that the form in which it is proposed to relieve these men should be such as would remove all doubt. Now, it is admitted that the *bajiaftidars* were people who held land revenue free; they claimed to hold it revenue free at the first settlement of Orissa, when their title to hold revenue free was questioned and adjudged, and afterwards it was found that they were not entitled to hold it revenue free or on a particular percentage of revenue, and then they were assessed. Now, this should be borne in mind, Sir, that what was assessed on them was the revenue, *i.e.*, there was a contract between the Government and these people, and they had a proprietary right in the land. I should not have fought for these people if they numbered only a few hundreds. These people hold lands which is equal to one-sixth of the total cultivated area and they pay 7 or 8 lakhs of revenue. They form an important class. Well, what was done during the last revenue settlement was that their status was altered under the Bengal Tenancy Act.† The Bengal Tenancy Act,† Sir, has always been responsible for the Bengal tendency of all your more recent agrarian legislation in Orissa. The result is that that these *bajiaftidars* have been made to fit in with the definitions in the Bengal Tenancy Act.† It is something like putting a round man into a square hole. I do not know whether anybody has actually tried the experiment.

---

* This and the following numbers refer to the serial number of the amendments set out in Annexure A to the List of Business laid upon the table.

† *i.e.*, Act VIII of 1885.

[*Mr. M. S. Das.*]

"Now, the course which was adopted made the consequences disastrous to these people. Their rights suffered and Government saw it, and this is very graphically described in Mr. Maddox's letter; and I reiterate the sentiment to which I gave expression the other day that I do admire and appreciate, not for myself but on behalf of these thousands of people, Mr. Maddox's statement that some mistakes have been made in dealing with agrarian matters in Orissa in the past, that some rights may have been prejudiced, and that he is anxious to do justice to the people of Orissa. There is no difference between us there. I say I admire this spirit in Mr. Maddox, and I hope that he may live long to associate this consciousness of human infirmity with a keen sense of justice in still higher offices than the one that he now fills. But then the question is, what is being done now? The *bajiaftidar* is made in some cases a raiyat and in some cases a 'tenant' and this fact is recorded under the Bengal Tenancy Act.* Mr. Maddox, in his letter dated the 6th April, 1909, says:—

'The *bajiaftidars* complain that they are by origin proprietors and not tenants. Historically this is true. In the settlement of 1837, and again in the settlement of 1890 and 1900, although Government fixed their rents for the terms of each settlement they were ordered to pay for their lands (where the area was less than 75 acres), through the proprietor or proprietary or sub-proprietary tenure-holder, to Government, and these payments have been so made without objection for the last 70 years. It must, however, be remembered that, originally, under clause 22, Regulation XII † of 1805, *the revenue, not the rent* assessable on these tenures, was declared to belong to Government. The *bajaftidars* are not, therefore, by *origin* at any rate, tenants within the meaning of section 3 (*3*) of the Bengal Tenancy Act,* because the person (proprietor or proprietary or sub-proprietary tenure-holder) under whom they now hold does not 'own' the *bajafti* lands. This is also very clearly shown by the fact that where the resumed grant exceeded 75 acres, a separate estate was created in 1837 and the holders paid revenue direct to Government. Moreover, in the 1837 settlement, the zamindar retained only collection expenses and handed on the whole balance (without deduction for *malikhana* or proprietary allowance) to Government, and although in the settlement of 1890-1900 the zamindar was allowed to retain the same percentage of the *bajafti* assets as he retained of the raiyats' assets, he was permitted to do so only because the *bajaftidars* had in the past paid pepper-corn rents, and because it was thought that, without such a concession, the rents enhanced at that settlement could not possibly be collected. On the other hand, they (except the holders of 75 acres and more) have, as already stated, made payments for their lands to zamindars for 70 years, and their lands have been included within the areas of the estates of zamindars for the whole of that period. Possibly, therefore, *by the custom of* dealing therewith, their interests have now become tenancies. Nevertheless, it seems to me that something should be done in order to preserve to them their rights in their property . . . . . .

'Then, further on, Mr. Maddox says that under the settlement of 1890 to 1900, some of them have been recorded as tenure-holders in accordance with the provisions of the Bengal Tenancy Act.* The effect of this has been to reduce them from the position of tenure-holders to raiyats pure and simple, more especially as their holdings have been distributed exactly as have those of other tenants. They have thus suffered material injury in the following way: Zamindars are now treating them as ordinary tenants, not permitting their transfer of right on payment of *salami*, and so on. I admit, Sir, that there is anxiety on the part of Government to compensate and to restore them to their former position, but the attempt here made is doomed to failure. For the Bill puts the matter in this form:—

'"*Bajiaftidar*" means a person holding lands the title to hold which upon special terms was declared invalid by the Cuttack Land-revenue Regulation, 1805, the Bengal Land-revenue Assessment (Resumed Lands) Regulation, 1819, or the Bengal Revenue-free Lands Regulation, 1825, and which has been assessed, in the course of a settelement of land-revenue, at a rent fixed for the term of that settlement; and includes also the successors in interest of such a person.

"Now it will be seen that the word 'rent' is used. That means that the '*bajiaftidar*' holds the position of a tenant, and consequently it is ignored that he formerly stood immediately under Government and that revenue was

---

* *i.e.*, Act VIII of 1885.

† *i.e.*, the Cuttack Land-revenue Regulation, 1805.

[*Mr. M. S. Das.*]

assessed on him. Mr. Maddox's letter says 'loss of property.' What right can a tenant have? Tenants have no other right in land except the right of occupancy. Then again, we find that there has been an anomaly in that the same class of people in some instances have been called tenure-holders and in other cases raiyats. But an attempt is made to reconcile this in clause 6, which runs thus—

"(i) every *bajaftiar* who is recorded, in any record-of-rights finally published under Chapter XI or under any other law for the time being in force, or in any Land Records published and finally framed under Chapter XII, as a tenure-holder, and his successors in interest, shall be deemed to be a tenure holder for all the purposes of this Act;

"(ii) every *bajaftidar* who is recorded in any such record-of-rights or Land Records as a raiyat, and his successors in interest, shall be deemed to be a tenure-holder for the purposes of sections *13A to 13C and 91*, and a raiyat for the purposes of all other sections of this Act, and

"(iii) every sub-proprietor shall be deemed to be a tenure-holder for the purposes of sections *13A to 13C, 91, 92 and Chapter XVII, and to be a permanent tenure-holder for the purposes of section 6*."

"Now, the same man assumes a dual capacity. He becomes for certain purposes a tenure holder, and for certain other purposes a raiyat. In the matter of transfers, what right has a raiyat? The raiyat has only the right of occupancy to transfer. Well, he transfers it in a deed in which he calls himself a tenure-holder. Now when a right of occupancy comes into the hands of a tenure-holder, it disappears by the doctrine of merger. What becomes of this doctrine of merger then? A man occupying a higher status purports to sell a right to a man under him; he cannot do any such thing and he therefore sells nothing. We cannot do away with the doctrine of merger, unless we say we will disregard all established principles of law and introduce this new principle here. What becomes of the position of the zamindar when lands get into his hands in which a right of occupancy subsists? Therefore the only way to do away with the difficulty (which arose out of an attempt to squeeze the *bajaftidars*, as it were, into the definitions of the Bengal Tenancy Act) is to do away with the Bengal Tenancy Act.* These definitions were never meant for this class of people: they are a separate class—I say, treat them separately, and make the definition such as to show their origin.

"I have been given to understand that, though the *bajaftiar* is recorded as a raiyat, there is some entry to show that he is not an ordinary raiyat but a *bajafti* raiyat; consequently these people form a separate class of raiyats by themselves and a separate class of tenure-holders by themselves, and they ought to be left as such. If we do not do that,—though it may be the intention of Government to compensate them for the wrong that I say has been done to them,—the intention will not be carried out by means of the definition in the Bill, because, if the definition is one in which their origin is lost, the Law Courts will not go on to inquire into what was the intention. This letter from Mr. Maddox, whatever might be its value here, will have no value in a Court of Law, because a Court of Law will never construe an enactment in the light of the intention of the Legislature or the intention of Government. The intention should be inferred from the wording of the Bill. I do not mean to say that I arrogate to myself such knowledge of law as to say that my amendment is perfect. I am quite willing to be convinced that a slight alteration here or there is necessary; or let the whole thing be done away with and let another amendment be made. But all that I say is that it should be left beyond doubt that the definition should be such as will show the origin of these people, that they were not raiyats, and that they were actually men on whom Government revenue had been assessed. And if they pay their revenue to the zamindar, it is because they hold a small quantity of land. This is done for convenience in the collection of revenue. My suggestion, of course, will require consequential amendments throughout the Bill, and these have been suggested.

* i.e., Act VIII of 1885.

[*Mr. H. McPherson.*]

And then with regard to clause 6, to which I have drawn the attention of Hon'ble Members That clause speaks of every *bajiaftidar* who is recorded in any record-of-rights finally published under Chapter XI. Chapter XI of course is a part of this Bill. Up to this time there has been no record; when this Bill comes into force there will be a record. Further, clause 6 says 'under any other law for the time being in force.' What that means I do not understand; whether it means any other law, subsequent to this date or prior to this date, hitherto in force, I do not know. I do not understand what is meant by 'any other law for the time being.' It may mean any law in force when these men were first recorded The 'record-of-rights' is nowhere defined. A 'record-of-rights' can be any paper which records the rights of a party. Thus 'record-of-rights' may mean a settlement of records of the early British administration. In Orissa these records would show the names of people whose lands have been assessed, and therefore the definition in the Bill is defective On these grounds I do sincerely hope that there will be a sincere and serious attempt to see that the intention of Government is carried out with some attention to what the decisions of the Law Courts are likely to be."

The Hon'ble MR. H. MCPHERSON said:—

"This is one of a series of amendments on the subject of *bajiaftidars* which have been moved by the Hon'ble Mr Das. The others are numbers 11, 18, 128, 152, 156, 222, 253, 257 to 261. I oppose them, partly because they are entirely unnecessary, and partly because they are not likely to be advantageous to *bajiaftidars* but rather the reverse. This particular amendment refers to the definition of *bajiaftidar*. The first portion of the amendment makes no real difference in the definition. The second portion is based on a misapprehension regarding the nature of the distinction which was drawn at the last Revenue Settlement between a *bajiaftidar* tenure-holder and a *bajiaftidar* raiyat; and here I may remark that every *bajiaftidar*, whether tenure-holder or raiyat, has been clearly recorded in the settlement records as a *bajiaftidar*. The classification as tenure-holder or raiyat is an additional description; the word *bajiaftidar* is in no case left out. There is nothing in the record which can cloud or obscure the name or the origin of the right. The distinction drawn between *bajiaftidar* tenure-holder and *bajiaftidar* raiyat was based upon sub-section (5) of section 5 of the Bengal Tenancy Act.* The question was not whether the *bajiaftidar* cultivated his land through tenants or cultivated it himself. The question was whether the tenancy was a large tenancy or a petty one. So far as my knowledge goes, the great majority of *bajiaftidars*, if not all of them, are members of the higher castes who cultivate their lands through under-tenants. They do not cultivate with their own hands. According to the figures given at page 309 of Mr. Maddox's Settlement Report, Volume I, there are in Orissa 253,200 *bajiafti* holdings with an area of 296,000 acres The average is not much over one acre. It is obvious from these figures that the great majority of *bajiafti* tenancies are very petty If all had been classed as tenures—that is as *bajiafti* tenures—in the last Revenue Settlement, occupancy-rights would have accrued in all cases to the under-tenants, who would have been raiyats holding under tenure-holders. The effect of classing the smaller *bajiaftidars* as *bajiafti* raiyats was to relegate their under-tenants to the position of under-raiyats and to prevent those under-raiyats from acquiring occupancy-rights. This was done in the interests of the petty *bajiaftidars*.

"Now, some of the local Associations, in their criticisms of the Bill, have asked that all *bajiaftidars* be classed alike as tenure-holders. We have not accepted this suggestion, because its effect would be to deprive the poorer *bajiaftidars* who have been recorded as *bajiafti* raiyats, of the protection which they now enjoy against the accrual of occupancy-rights. As the Bill now stands, we have secured for these *bajiafti* raiyats all the privileges of transfer and status which attach to *bajiafti* tenures. This is arranged by the provisions of sub-clause (2) of clause 6, to which the Hon'ble Member objects in amendment No. 18. We

* i.e., Act VIII of 1885.

[*Mr. H. McPherson; Mr. M. S. Das.*]

put the *bajiafti* raiyat, so far as transfer and all other rights are concerned, in exactly the same position as a *bajiafti* tenure-holders. At the same time, we leave him that protection which he enjoys through being recorded as a raiyat instead of being recorded as a tenure-holder. At the present day in Bengal most people who have tenancy interests in land are endeavouring to be recorded as raiyats and not as tenure-holders, their object being to debar the people under them from securing occupancy-rights. We have conceded this advantage to the petty *bajiaftidars* of Orissa by calling them *bajiafti* raiyats. So long as the word *bajiaftidar* is attached to their names, they cannot suffer injury as regards the rights based on their peculiar origin and status. At the same time, we have taken care by means of the provisions of clause 50 that the *bajiaftidar* raiyat shall not be handicapped by the operation of the ordinary provisions of the law regarding rent recoverable from under-raiyats. I explained the position to the Orissa members of the Select Committee at a time when the Hon'ble Mr. Das was unfortunately absent, and they were all agreed that no change in the Bill was necessary or desirable.

"The Hon'ble Mr. Das, so far as I have been able to understand him,—and I confess I find him very difficult to follow,—has argued that because the *bajiaftidars* by origin had something of the nature of proprietary rights attached to their interests, we should regard them as proprietors or semi-proprietors, and not record them as tenure-holders or raiyats. It seems to me to be too late in the day to make a change of this sort, or to embody it in the Bill. We have made perfectly plain by our definition what all *bajiaftidar* tenants were in origin, namely, persons holding lands on revenue-free grants which were found to be invalid. The Courts will have that definition before them, whenever any question of their rights comes up. At the same time we have provided that, whenever they wish, they may transfer their tenures without getting the consent of their zamindars, or other superior landlords. We have taken care, in fact, in this Bill to preserve all their rights that are of a real or practical nature. The Hon'ble Mr. Das' definition merely differs from ours in saying that they were assessed to *jama*, which shall be deemed to be rent, whereas we say that they were assessed to rent. The *bajiaftidars* have been treated as tenants for the last 50 years; they have been sued for rent under Act X of 1859,* and they have been sold up under the Bengal Rent Recovery (Under-tenures) Act of 1865.† Why should we make this change now on grounds which are purely sentimental? It seems to me, it will only create confusion if we accept the Hon'ble Member's proposal. And I may say here that I entirely demur from the Hon'ble Member's insinuation that the settlement authorities have done injustice in Orissa and are now seeking to cover up their past errors by means of this legislation. There may have been mistakes in certain cases, I admit; for in proceedings involving hundreds of thousands of entries there must be mistakes. But that there has been deliberate injustice done to the *bajiaftidars* or to any other class in Orissa through the agency of the Settlement Officers is simply not true, and I accordingly ask the Council to take Mr. Das' suggestions in this regard with the proverbial pinch of salt. As for the *bajiaftidars*, the Bill, as it stands, makes their position perfectly clear, and I therefore ask the Hon'ble Mover to withdraw his amendment. If he does not see his way to withdraw it, I would advise that it be rejected by the Council."

The Hon'ble Mr. Das said:—

"Sir, as regards the remarks of the Hon'ble Member in charge of the Bill that for a long time these people have paid rents to the zamindar, that was simply because there was an arrangement between the Government and the zamindar of the estate within the ambit of which these lands lay. That was in consequence of an arrangement: the zamindar there stood in the position of a farmer: he collected the rent, and they called it rent in order to give

* *i.e.*, the Bengal Rent Act, 1859.
† *i.e.*, Ben. Act VIII of 1865.

facilities for the collection. But why is it too late in the day? We recognise that these people have lost rights, and all that my amendment would introduce is that wherever in the Bill the word 'raiyat' occurs the words '*bajiafti* raiyat should be read, whereas in the Bill the word 'raiyat' only occurs. It may be that they have been recorded so elsewhere, and that in the record-of-rights the word *bajiafti* is entered, but it is not so in the Bill."

The Hon'ble MR. H. MCPHERSON said:—

"We have used the word *bajiafti* everywhere in the Bill where *bajiafti* tenancies are referred to."

The Hon'ble MR. DAS said:—

"Only a raiyat is mentioned in some instances. I wish to say that it refers to *bajiafti*. All that my amendment introduces is that wherever you find tenure-holder say *bajiafti* tenure-holder, and wherever you find raiyat say *bajiafti* raiyat.

The Hon'ble MR. H. MCPHERSON said:—

"When the word *bajiaftidar* is used alone, it covers both *bajiafti* tenure-holders and *bajiafti* raiyats."

The Hon'ble MR. DAS said:—

"Then the Hon'ble Member in charge of the Bill has not taken any notice of the doctrine of merger. I can very well understand why, because it is supposed we can always look down with contempt on what the lawyers think about these things. I remember that this is not the first time in my experience. I remember having raised a legal objection in this Council long ago when the Hon'ble Member in charge of a Bill gave me a sharp rebuke, and I remember the then Advocate-General coming to my rescue, saying that it was a pure point of law and that the offending clause ought to be withdrawn. Fortunately, or unfortunately—fortunately for the Hon'ble Member in charge of the Bill, but unfortunately for me—we have not got even the Standing Counsel* sitting here. Of course, all that I can say is, do not let these things be given in a dubious form, and, if the intention of Government is to give a right, let it not be given in a form in which there is doubt as to how that clause would be construed by the Courts. If I am wrong (I do not want to arrogate to myself such knowledge of law as to say that my amendment is perfect), let it be settled by somebody—whether the Hon'ble Member in charge of the Bill or some one else. He has never informed me that he has consulted any lawyer, the Advocate-General or Standing Counsel, or that any other lawyers have been consulted. As it is, the Hon'ble Member in charge of the Bill did not take any notice of the doctrine of merger.

A division was then taken, with the following result:—

Ayes—12.	*Noes—30.*
The Hon'ble Babu Bhupendra Nath Basu.	The Hon'ble Mr. Slacke.
" Rai Sita Nath Ray Bahadur.	" Raja Kisori Lal Goswami.
" Maharaj-Kumar Gopal Saran Narayan Singh.	" Mr. Greer.
" Raja Rajendra Narayan Bhanja Deo.	" Mr. D. J. Macpherson.
" Babu Deba Prasad Sarbadhikari.	" Mr. Collin.
	" Mr. Stevenson-Moore.
	" Mr. Chapman.
	" Mr. Finnimore.

* The Standing Counsel Hon'ble Mr. Mitra was, by permission of the President, absent throughout the debate.

[*Mr. M. S. Das.*]

Ayes—12—concld.

The Hon'ble Mr. Apcar.
" Mr. Saiyid Wasi Ahmad
" Maulvi Saiyid Muhammad Fakhr-ud-din.
" Rai Sheo Shankar Sahay Bahadur.
" Mr. Das.
" Rai Baikuntha Nath Sen Bahadur
" Khan Bahadur Maulvi Sarfaraz Husain Khan.

Noes—30—concld.

The Hon'ble Mr. Kerr.
" Mr. Stephenson.
" Mr. Maddox
" Mr. Kuehler
" Mr. Morshead.
" Sir Frederick Loch Halliday, Kt.
" Mr. Cumming.
" Mr. Bompas
" Mr. H. McPherson.
" Babu Janaki Nath Bose.
" Maharaja Bahadur Sir Prodyot Kumar Tagore, Kt.
" Sir Fredrick George Dumayne, Kt.
" Kumar Sheo Nandan Prasad Singh.
" Lt.-Col. G. Grant-Gordon.
" Sir Bijay Chand Mahtab, Maharajadhiraja Bahadur of Burdwan.
" Babu Kirtanand Sinha
" Mr. Norman McLeod.
" Mr. Stewart.
" Mr. Gohan Hosein Cassim Ariff
" Babu Hrishikesh Lana
" Maulvi Saiyid Zahiruddin
" Mr. Reid

The following Members were absent :—

The Hon'ble Mr. Mitra.
" Maharaja Manindra Chandra Nandi.
" Dr. Abdullah-al-Mamun Suhrawardy.
" Mr. Dutt.
" Babu Mahendra Nath Ray.
" Babu Braj Kishor Prasad.
" Mr. Dip Narayan Singh.
" Bal Krishna Sahay.

The result of the division was, *ayes* 12, *noes* 30, and the motion was therefore lost.

The Hon'ble MR. H. MCPHERSON said :—

"Before the Hon'ble Mr. Das proceeds to move his amendments, Nos. 2 to 4, I wish to explain to him that I am willing to accept his amendment No. 4 'except the power of hearing appeals' in a slightly modified form, which comes to practically the same thing; I would suggest that the words 'other than functions covered by section 213' be added at the end of the sub-clause. This is the form which appears to be best from a drafting point of view."

The Hon'ble MR. DAS said :—

"If the Hon'ble Member accepts my amendment No. 4, I am ready to withdraw this amendment."

The PRESIDENT said :—

"I don't know whether you have understood the position. The form in which Mr. McPherson is willing to accept No. 4 is not as you put it 'except the power of hearing appeals,' but with the words 'other than functions covered by section 213.' added after the word 'provision' at the end of clause 3 (*4*) (*b*). I believe it is practically the same thing."

The Hon'ble MR. DAS said :—

"I accept the suggestion, Sir."

The following motions were then, by leave of the President, withdrawn :—

2. The Hon'ble Mr. M. S. Das to move that clause 3 (*4*) (*b*) be omitted.

3. If motion No. 2 be not carried, the Hon'ble Mr. M. S. Das to move that the word "experienced" be inserted after the word "any" in line 1 of clause 3 (*4*) (*b*).

4. The Hon'ble Mr. M. S. Das moved that the words "except the power of hearing appeals" be added after the word "provision" at the end of clause 3 (*4*) (*b*).

The Hon'ble Mr. H. McPherson proposed that the amendment be put in the amended form just suggested, namely, that the words "other than functions covered section 213" be added after the word "provision."

The motion was then put in the amended form and agreed to.

5. The Hon'ble Mr. M. S. Das moved that clause 3 (*15*) be omitted.

The Hon'ble MR. H. MCPHERSON said :—

"I am willing to accept this amendment for reasons which I will explain. The clause contains a definition of proprietor's private lands. I am willing to accept the amendment because the ground covered by the definition is fully covered by Chapters VII and XIII, and the definition therefore seems to be surplusage. If this motion be accepted by the Council, then amendments 6, 7, 8, 9 and 10 will automatically disappear. The ground of discussion raised by these amendments is covered by the amendments which have been proposed later to Chapters VIII and XIII and will be discussed later.'

The Hon'ble MR. DAS said :—

"I am thankful to the Hon'ble Member in charge."

The motion was then put and agreed to.

[*Mr. M. S. Das; Babu Hrishikesh Laha; Raja Rajendra Narayan Bhanja Deo; Rai Sheo Shankar Sahay Bahadur; Mr. Saiyid Wasi Ahmad.*]

The following motions were, by leave of the President, withdrawn :—

6. If motion No. 5 be not carried, the Hon'ble Mr. M. S. Das to move that the following be substituted for clause 3 (*15*), namely :—

"(*15*) 'Proprietor's private land' means,

(*i*) in temporarily-settled areas, lands which were recorded as *nij-jote* in the record-of-rights published between the years 1891 and 1900, or between the year 1906 and the commencement of this Act, and lands which were recorded as *nij-chas* between the years 1891 and 1900 and again between the year 1906 and the commencement of this Act, and which are held by proprietors and sub-proprietors, other than those referred to in sub-clause (*i*) of clause (*22*) of this section, or by tenants holding under such proprietors or sub-proprietors under leases for a term of years or under leases from year to year; and

(*ii*) in permanently-settled areas, lands which are known in such areas as *nij-jote*, *khamar*, *khudkast*, *nij-chas* and which are held as *nij-jote* by custom."

7. The Hon'ble Babu Hrishikesh Laha to move that the word "*nij-chas*" be inserted after the word "*nij-jote*" in line 2 of clause 3 (*15*).

8. The Hon'ble Raja Rajendra Narayan Bhanja Deo to move that the word "*nij-chas*" be inserted after the word "*nij-jote*," in line 2 of clause 3 (*15*).

9. The Hon'ble Rai Sheo Shankar Sahay Bahadur to move that the words "other than those referred to in sub clause (*i*) of clause (*22*)" in lines 3 and 4 of clause 3 (*15*) be omitted.

10. The Hon'ble Raja Rajendra Narayan Bhanja Deo to move that the words "under leases for a term of years or under leases from year to year" in lines 5 and 6 of clause 3 (*15*) be omitted.

11. The Hon'ble Mr. M. S. Das to move that the following be added as an Explanation to clause 3 (*17*), namely :—

"*Explanation.*—The revenue payable for *bajiafti* land to the proprietor of an estate, settled on special terms by the Government with such proprietor, shall be deemed to be rent."

Clause 5.

12. The Hon'ble Mr. Saiyid Wasi Ahmad moved that the words "or by hired servants, or with the aid of partners," in lines 3 and 4 of clause 5 (*2*) be omitted.

He said :—

"Sir, before I move my amendment for the consideration of the Members of Council, I should like to make one observation in connection with a remark that fell from the Hon'ble Member in charge of the Bill. He has told the Council just now that it struck him as rather unusual to see the Bihar Members taking such a keen interest in connection with this Bill. I must say that I was rather surprised to hear a remark of this nature from a Legislator. The object that has led at least some of us Biharis to take an interest in this Bill, is primarily because we consider it the duty of every Member of this

[*Mr. Sayyid Wasi Ahmad.*]

Council to take an interest in any measure that may be brought before this Council, irrespective of the question whether it touches one part of the Province or another. It would indeed have been a remarkable feature in connection with the discussion of this Bill if only the two Hon'ble Members who came from Orissa had taken part in the discussion and if all the others had merely formed the audience.

"The second reason why we particularly feel for this Bill is that it appears to me that, after the separation of this Province and the creation of the new Province of Bihar, we shall be practically having two Acts in force in one and the same Province. In the Province of Bihar we shall have the Bengal Tenancy Act* (I don't know how that will sound—the Bengal Tenancy Act* in Bihar)—as also the Orissa Tenancy Act; and the chances are that, in about a year or two's time, we shall have an Act, or rather a Bill introduced in the Bihar Council, very similar to this Orissa Tenancy Bill; and probably the Bengal Tenancy Act* will not long be in existence in Bihar. That is also a reason why we have thought it fit to take an interest in this Bill.

"Now, my amendment is that the words 'or by hired servants, or with the aid of partners' be omitted in lines 3 and 4 of clause 5 (*2*). I am aware, Sir, that in the definition of 'Raiyat' in the Bengal Tenancy Act,* these words actually occur, but the question of hired servants and partners has been, to my knowledge, a cause of great anxiety to the petty zamindars in Bihar. Further, it will appear from the definition of tenure-holder, and also from the explanation in the Bengal Tenancy Act* that the Government has taken care to call a person holding a certain quantity of land not a raiyat but a tenure-holder; for instance, we find that in the Bengal Tenancy Act* a person holding more than one hundred *bighas* of land will be presumed to be a tenure-holder and not a raiyat; also, in the present Bill, we find that, later on in sub-clause (*5*), it has been laid down 'where the area held by a tenant exceeds thirty-three acres, the tenant shall be presumed to be a tenure-holder until the contrary is shown.' So that there is already an attempt, both in the Bengal Tenancy Act* and also in the present Bill, to restrict the area of land actually held by a raiyat. We further find that, under the Cess Act,† a tenant, paying more than Rs. 100 as rent, is presumed, for the purpose of the Cess Act,† to be a tenure-holder and not a cultivating raiyat. There also the limitation has been applied.

"My intention in moving this amendment to do away with hired labour is, that a raiyat, literally speaking, is really one who actually cultivates the land: that is to say, no raiyat should get his land cultivated either by a hired servant or by partners, because you will be simply allowing a raiyat, who may possess a lot of servants and who may also have a few partners, to unnecessarily get more land for the purpose of cultivation than he can actually cultivate himself. I certainly agree with the idea of putting the words 'the members of his family' in the definition of 'raiyat.' It is with this object, Sir, that I think a raiyat should not get more land than he can himself cultivate or get cultivated by the members of his family. A case has been put to me this morning by a friend of mine who asked me to reconsider this amendment, and if possible to withdraw it, viz., the case of a widow—a *purdanashin* widow—who has got no one to look after her land. What will be the fate of such a raiyat? A sufficient reply to that would be that we have got in this very Bill a provision for creating sub-tenants or under-tenants, so that the reply to the argument that if a *purdanashin* woman happens to possess certain land, she will not be able to cultivate herself and may not have any other male member of the family to help her do so, is that she can certainly let it out to others for the purpose of cultivation and create a sub-tenancy.

"I therefore, submit, Sir, that the Hon'ble Members of this Council will see the reason which has load me to move this amendment. My only ground, as I have already said, is that a raiyat should only be one who can cultivate the land himself and not by hired servants or partners."

---

* *i.e.*, Act VIII of 1885.
† *i.e.*, Ben. Act IX of 1880.

[*Maulvi Saiyid Muhammad Fakhr-ud-din; Rai Sita Nath Ray Bahadur; Khan Bahadur Maulvi Sarfaraz Husain Khan; Babu Janaki Nath Bose.*

The Hon'ble MAULVI SAIYID MUHAMMAD FAKHR-UD-DIN said:—

"Sir, I rise to oppose this amendment. My reason is that my friend seems to be labouring under a misapprehension about the definition of tenure-holder and a raiyat. If you take out the words 'or by hired servants or by the aid of partners' I think you will cut down the number of raiyats to a nullity, because almost in 95 per cent of the cases these raiyats have to employ at least ploughmen and they also are hired servants. Without ploughmen these lands cannot be cultivated. Then again respectable men, as for instance myself or my hon'ble friend the mover of this amendment, could not purchase lands, because as soon as we purchased 'raiyati lands,' we should have to employ servants to cultivate them, and therefore our tenancy right would cease to exist. Therefore, I think it would be rather unsafe to cut out these words. In cases of *purdanashin* ladies without any relations, or in cases of widows or in cases of respectable people who have to employ hired servants, it would be impossible for them to cultivate the land. Now, if these words are omitted, those persons will have to lose their raiyati rights.

Then we have got here in sub-clause (5) the words 'where the area held by a tenant exceeds thirty-three acres, the tenant shall be presumed to be a tenure-holder until the contrary is shown' "My friend seems to think that even if a raiyat who has got only five bighas of land is incapable of cultivating it with his own labour and without the aid of servants or partners, his status will be that of a tenure-holder. I think this principle will be altogether unsound. If a man having five bighas of land will be a tenure-holder, what would be the necessity of defining the status of a tenure-holder in sub-clause (5) of the clause under consideration? A tenure-holder has got a status superior to that of a mere cultivator. I therefore oppose this amendment."

The Hon'ble RAI SITA NATH RAY BAHADUR said:—

"I am sorry to oppose this amendment, Sir. I am surprised that such an amendment has been brought in. It is a daily experience in Eastern Bengal, and in fact it is the case everywhere, that hired servants have to be engaged by ordinary raiyats; this is all the more necessary at the time of reaping the harvest. It is well known that large number of hired servants from different parts of the province go to Backerganj (the noted granary of Bengal) and other places for assisting the cultivators in reaping the crops, and each man is paid not in cash, but by a certain portion of the produce. It would not be possible to carry on agricultural operations without hired labour. What would be the fate of infants and widows if they were prevented from engaging hired labour."?

The Hon'ble KHAN BAHADUR MAULVI SARFARAZ HUSAIN KHAN said:—

"I am surprised to hear how this amendment has been put in. I need not say much, but those who have got experience in zamindari matters know well that it would be impossible to do without hired labour."

The Hon'ble BABU JANAKI NATH BOSE said:—

"Testimony has come from Bihar as well as from East Bengal that this amendment is not sound. I can also bear some testimony as one representing Orissa in this Council. Now, Sir, it is a very well known fact that *bonâ fide* raiyats do employ hired servants, and those hired servants have got a peculiar name. They are called *hathias*. It is also a well known fact that *bonâ fide* raiyats cultivate land in aid of their partners, and, if this amendment is accepted, it may benefit the zamindars, but it will be injurious to a large number of raiyats who depend for their livelihood on the produce of their land."

[*Rai Baikuntha Nath Sen Bahadur ; Mr. Saiyid Wasi Ahmad ; Maulvi Saiyid Muhammad Fakhr-ud-din.*]

The Hon'ble RAI BAIKUNTHA NATH SEN BAHADUR said :—

"I do not wish to take up the time of the Council, but I wish to say that this amendment is rather out-of-date. If my friend takes the trouble to study the literature on the subject, he will find that in 1859, when Act X of 1859* was passed, this question was discussed threadbare, and in discussing the question whether the raiyat ought to have the right of occupancy or not the question arose as to whether a man, when he is not actually cultivating himself but has to cultivate by means of hired labour or by the members of his family, will be considered as cultivating the land. This was considered in 1859, and I think nothing has taken place since then to change the decision; so I think my friend might possibly think it worth his while to withdraw this motion.

The Hon'ble MR. SAIYID WASI AHMAD said :—

"I beg to withdraw the amendment.

The amendment was then, by leave of the President, withdrawn.

13. The Hon'ble Mr. Saiyid Wasi Ahmad moved that the words "or of grazing cattle on it" in lines 4 and 5 of the *Explanation* to clause 5 (*e*) be omitted.

He said :—

"The reason why I have moved this amendment is that it may lead to very undesirable results if tenants are permitted to hold land for the purposes of grazing cattle on it, and yet be called raiyats. The *Explanation* runs thus:—'Where a tenant of land has the right to bring it under cultivation, he shall be deemed to have acquired a right to hold it for the purpose of cultivation, notwithstanding that he uses it for the purpose of gathering the produce of it or of grazing cattle on it'

"Now take a concrete case. Suppose a raiyat has got 5 bighas of land and he, instead of cultivating it with a crop that is prevelant in that part, simply grows fodder and grass for purposes of grazing cattle, he will, under this definition, nevertheless hold all this land as a raiyat and the land will be still considered as cultivating land. I am not familiar with the name that is given in Orissa to land intended for grazing cattle, but in Bihar, such lands are called *charuawa* land and are usually found in every village. If you allow each tenant to graze cattle on any kind of land he desires, the danger is that the land may become, say after 20 years, almost useless for ordinary cultivation. Therefore I submit, Sir, that that portion of the *Explanation* dealing with cattle-grazing should be omitted."

The Hon'ble MAULVI SAIYID MUHAMMAD FAKHR-UD-DIN said :—

"I rise to oppose this amendment also, because here again it appears that some misapprehension has arisen in the mind of the Hon'ble Member. Here it is said :—'Where a tenant of land has the right to bring it under cultivation, he shall be deemed to have acquired a right to hold it for the purpose of cultivation, notwithstanding that he uses it for the purpose of gathering the produce of it, or of grazing cattle on it.'

"Generally, it happens that these tenants set apart a portion of land for the purposes of making a *kalihan*. Even if that portion has been used for purposes of a *kalihan* for a number of years, still a person has got the right to bring that land within his cultivation in future. The meaning of this expression to my mind appears to be this, that although a tenant had been using it for purposes of gathering produce or grazing cattle on it, he can also use it for the purpose of cultivation, and he will not cease to have his *rayati* right simply because he failed to cultivate it for a few years or used it for any purpose other than cultivation for a number of years. If you do not give the raiyat this right, you place him in a most disadvantageous position. Therefore, I do not think, Sir, that these words should be omitted, and I oppose the amendment proposed by the Hon'ble Member the Mover."

* i.e., the Bengal Rent Act, 1859.

[*Mr. Kerr ; Mr. Saiyid Wasi Ahmad.*]

The Hon'ble MR. KERR said :—

"The Hon'ble Member, after his attack on agricultural partnerships, which includes the great question of Co-operative Credit Societies, has turned his attention to another of the most serious agricultural problems of rural India—the question of grazing grounds. The Hon'ble Member, as in the other case, has his own way of tackling the problem. This is a difficulty everywhere in India, but it is recognized by everybody, except the Hon'ble Member, that the proper way to tackle the question is to do all that is possible to induce the cultivators to keep a reasonable proportion of their lands out of cultivation, and to reserve them for grazing purposes. In some parts of India land-holders are given remissions of revenue on their grazing grounds to induce them to keep such lands out of cultivation. The Hon'ble Member, on the other hand, would penalise the reservation of grazing grounds, by destroying the raiyati rights of those who use part of their holdings for grazing. The provision which the Hon'ble Member asks us to amend is that a tenant who has acquired a right to hold land for the purpose of cultivation may, without losing his status as a raiyat, use it for the purpose of gathering the produce of it or of grazing cattle on it. The provision is meant primarily to apply to little patches of waste land and jungle. The raiyats use the produce for fuel and similar purposes, and they graze their cattle on the land, and it is a very good thing, in the interest of agricultural economy as a whole, that raiyats should be encouraged to keep small parcels of land waste within their holdings, instead of bringing the whole under cultivation. One of the great difficulties of the cattle question in many parts of this country, is that cultivation has extended to such an extent as to leave insufficient grazing grounds. To a certain extent it is impossible, with the growing competition for land, to put a stop to this process, but we certainly ought to do nothing to accelerate it. The raiyat must have cattle and if there is no land on which he can graze them they must be still fed : but this is an expensive operation and bad for the cattle themselves, as young cattle, like young children, need exercise as well as food. The effect of the Hon'ble Member's amendment would be that, if a prudent husbandman kept a bit of waste land for grazing his cattle or allowed a part of his land to lie fallow for a year or two and grazed his cattle on it, he would at once lose his status as a raiyat.

"Practically, therefore, the Hon'ble Member's proposal would compel him to bring the whole of his lands under cultivation every year. Anything more undesirable in the interests of individual raiyats and of the agricultural population generally, could not be imagined.

"I do submit, Sir, that the first thing to be considered in Tenancy legislation is its effect on the economic condition of the country. As I have shown, the effect of this amendment would be wholly bad, and I must therefore ask the Council to reject it."

The Hon'ble MR. SAIYID WASI AHMAD said :—

"It appears to me that there must be some misunderstanding or misapprehension on the part of the Hon'ble Mr Kerr. In moving this amendment of mine, I had no desire that no part of the land should be kept apart in a village for purposes of grazing cattle. I have already stated that, in each village, there is such a thing as *charuawa* land in existence, and that the cattle go there for the purpose of grazing. What I object to is that each raiyat should not be given, under this Bill, the power to utilize a portion of his land, which is meant for cultivation, for purposes of grazing cattle, because my fear is that if you use the land for such a purpose for a long time it will become useless, and if each tenant is allowed to grow anything he likes on land for cultivation, the land will become unfit for cultivation of the crop which is chiefly prevalent in that part of the country."

The motion was then put and lost.

[*Mr. Saiyid Wasi Ahmad; Maulvi Saiyid Muhammad Fakhr-ud-din; Maharajadhiraja Bahadur of Burdwan; The President; Mr. M. S. Das.*]

The following motion was, by leave of the President, withdrawn:—

14. The Hon'ble Mr. Saiyid Wasi Ahmad to move that the word "and" be omitted at the end of clause 5 (4) (*a*) and inserted at the end of clause 5 (4) (*b*), and that the following be added as sub-clause (*c*), namely:—

"(*c*) the fact that a tenant cannot be a raiyat of one portion and a tenure-holder of another portion of a holding."

15. The Hon'ble Maulvi Saiyid Muhammad Fakhr-ud-din moved that the words "of a holding" be inserted after the word "area" in line 1 of clause 5 (5).

The Hon'ble MAULVI SAIYID MUHAMMAD FAKHR-UD-DIN said:—

"I take it that the intention of the legislature is that, if one holding consists of more than 33 acres, the owner of the holding will be preumed to be a tenure-holder. A man may have different holdings of different quantities. Now, if he has got 25 acres, of land by inheritance, he may afterwards purchase another holding of 25 acres, and then again, by gift, he may get another holding of 22 acres. Now the aggregate of all these holdings will exceed 33 acres, but each of the holdings will be less than 33 acres. Therefore, the definition of a tenure-holder should not apply to such a man who has got different holdings, the aggregate of which comes to more than 33 acres. Without the insertion of the words "of a holding" after the word "area" some misapprehension may arise, and it may be a bone of contention in the Civil Courts, and therefore, in order to have an explicit meaning of sub-clause 5 (5), I suggest that the words "of a holding" may be added after the word 'area' so that there may not be any grounds for misapprehension hereafter."

The Hon'ble MAHARAJADHIRAJA BAHADUR OF BURDWAN said:—

"I brought this question forward in Select Committee, and I was told that it was quite clear that the words "of a holding" were implied. I specially rought this question to notice, because there had been one or two rulings which rather left this in doubt I was told by the Hon'ble Member in charge that there was no necessity of adding these words. I think in this statement the Hon'ble Maharaj Kumar Hrishikesh Laha and the Hon'ble Raja Rajendra Narayan Bhanja Deo will bear me out, and I should like to ask the Hon'ble Mr. McPherson to explain the matter to the Council."

The PRESIDENT said:—

"I may say that I do not know yet whether there are many identical motions, but the ruling which I have given before in this Council may be applied now, that is, that if a member has a subsequent identical motion, he must remember that only the member who actually moves the amendment has the right of reply, and that whatever he has to say should be said while the amendment first moved is under discussion."

The Hon'ble MR. DAS said:—

"I do not know what transpired in Select Committee, as I was unfortunately not present there, but at any rate, if the interpretation suggested is that which was put upon the clause by the Hon'ble Member in charge, I should say, why not give expression to one's intention? Intentions are like Goldsmith's wishes: 'If wishes were horses, beggars would ride.' Intentions are nothing. A man may intend to do many things, without giving effect in substance to his intentions. So it is much better to have intentions fully expressed. But apart from that, I am opposed to the principle underlying this clause This clause really means that, as soon as an actual cultivator attains a prosperous condition and becomes an owner of so much land, he must be removed from

[*Mr. Kerr.*]

the position and condition of a raiyat. Directly he is presumed to be a tenure-holder, those cultivating under him will have occupancy rights; consequently his position may be exalted in social status, though he may not have enough to feed his stomach, or clothe his back, with. But it is highly desirable on economic grounds that we should not have only raiyats with an average holding of an acre or ·80 of an acre, and that those men, who begin life as cultivators with a holding of one acre should be given every facility and encouragement to become prosperous cultivators so long as they are cultivators and actually cultivate the soil. Without this class of people it is not at all possible Sir, to have anything in the shape of agricultural improvement. We have been given by Government, very kindly, information about manure and other means of cultivation, but then, where are these means to come from? You tie down a raiyat to one acre of land where he will never be in a position to better himself. Of course, if a man does not cultivate himself, let him be a tenure holder. Why create a presumption in the matter? Why have difficulties thrown in the way of a man bettering himself? He may have a number of men serving under him, or he may go into partnership with another man, and the partner will then find that a presumption exists against the cultivator, and, taking advantage of this, will try to raise the position of his partner to that of a tenure-holder with a view to getting the right of occupancy.

"My contention is that a certain class of raiyats is being driven to poverty, while those who are thrifty and can manage their own affairs better are attaining a prosperous condition. Consequently, it is necessary, on economic grounds, that we should leave room for prosperity and growth of a certain class of raiyat and do nothing here which would encroach upon the tendency in that direction. On these grounds, Sir, I support the amendment of the Hon'ble Member."

The Hon'ble Mr. Kerr said:—

"I rise, Sir, to oppose this amendment, and I do so to a great extent on the general ground that this Council ought to be very chary of sanctioning a departure from the provisions of the Bengal Tenancy Act* in dealing with this Bill. This is a general ground which we shall have to take in regard to a good many of the amendments before the Council, and it may be well therefore if I explain the general views of Government in regard to the matter. We do not claim that the Bengal Tenancy Act* is a complete or perfect law. No human law is; but we do claim that the Bengal Tenancy Act* was passed 27 years ago, that it has stood the test of time remarkably well, and that it is the admiration of experts in tenancy law not only in India but also in other countries. Moreover, the principles of the Bengal Tenancy Act* were extended to Orissa in 1890, or more than 20 years ago. We do not claim that the Bengal Tenancy Act* in all its details is suited to the conditions of Orissa. This present Bill is a sufficient proof to the contrary; but we do claim that when any one contends that any particular provision of the Bengal Tenancy Act* which has been in force in Orissa for over 20 years and which we have not sought, in the light of our experience, to alter by this Bill, is found unsuitable to the conditions of Orissa, the burden of proof lies on him to make out a case. This is the principle which has been consistently adopted by us in dealing with this Bill. I think my hon'ble friend Mr. Maddox will bear me out when I say that his original draft Bill was subjected to scrutiny on this principle, and that no alterations were allowed to be made in the Bengal Tenancy Act* which were not clearly demanded by the particular circumstances of Orissa, and I think it is only fair therefore that the same principle should be applied to the amendments brought forward by the non-official members.

"Now, in regard to the particular amendment, the Hon'ble Mover has said that there may be a possible misapprehension on the part of the Civil Courts as to the meaning of this sub-clause. The answer to that is, I think, that the section has been in force for the last 27 years, and there is no evidence that

* i.e., Act VIII of 1885.

[*Mr. H. McPherson; Babu Bhupendra Nath Basu; Maulvi Saiyid Muhammad Fakhr-ud-din.*]

there has been any misapprehension. The Hon'ble Maharajadhiraja Bahadur of Burdwan raised the question in Select Committee, and we told him that, so far as we knew, there was no ground for reasonable misapprehension in regard to the meaning. I think there is no doubt that the unit for the application of this sub-section is the particular tenure or holding of the raiyat or the tenure-holder whose status is under consideration.

"Now, I would just point out the difficulties we shall encounter if we attempt to tinker with this sub-clause. The Hon'ble Mover wishes us to read the sub-clause in the following way:—'where the area of a holding held by a tenant exceeds 33 acres, the tenant shall be presumed to be a tenure-holder until the contrary is shown.' It is rather a technical point, but I must try my best to explain it to the Council. The word 'holding' is defined in sub-clause (8) of clause 5 as a parcel or parcels of land held by a raiyat. It is clear, therefore, that it would be a contradiction in terms to say that, where the area of a holding exceeds 33 acres, the tenant shall be presumed to be a tenure-holder. If a man has a 'holding' he cannot be a tenure-holder, but must be a raiyat. The Hon'ble Member's motion would therefore destroy the fundamental distinction between a tenure and a holding. I submit, Sir, that the provisions of the law should be retained and the amendment rejected, and I may add that nothing which the Hon'ble Mr Das has said need influence the Council to the contrary view. Personally, I found it extremely difficult to understand the drift of the Hon'ble Member's speech."

The Hon'ble MR. H. MCPHERSON said:—

"May I, Sir, supplement what has been said by the Hon'ble Mr. Kerr? I would draw the attention of the Council to one point only. When a general principle of law has been embodied in the Bengal Tenancy Act,* and were we to make any modification of language in the corresponding section of the Orissa Tenancy Bill, the inference to be drawn would be that the alteration was intentional, and we might thus cause confusion by deviations of language. If the words 'of the holding' are introduced in the Orissa Bill the Courts may inquire why they were omitted from the Bengal Tenancy Act.* The inference might possibly be that, in the Bengal Tenancy Act,* the 'area held by a tenant' included more than the land held in one single tenancy. That is the sort of danger to which I wish to draw the attention of the Council. We had better leave the clause as it is than tinker with the language, and so give rise to false impressions."

The Hon'ble BABU BHUPENDRA NATH BASU said:—

"The language is borrowed *verbatim* from the Bengal Tenancy Act,* substituting 33 acres in place of 100 bighas. I do not know that any difficulty has been experienced in Bengal with that section, and I do not anticipate that any difficulty will be felt with it in Orissa; but, at the same time, I realise that, if we introduce a difference now, it might lead to a different interpretation of the identical section standing in the Bengal Tenancy Act;* and on the grounds, firstly, that there has been no difficulty in the past, and, secondly, that any alteration made here may lead to a different interpretation of the section in the Bengal Tenancy Act,* I oppose the amendment."

The Hon'ble MAULVI SAIYID MUHAMMAD FAKHR-UD-DIN said:—

"The explanation which I have just heard from the Hon'ble Member in charge of this Bill has quite satisfied me that, as a matter of fact, the intention of the legislature is that this clause will apply to the area of a holding only. Now I do not find any valid reason for not incorporating these words 'of a holding,' after the word 'area', as admittedly that is the meaning of law. No doubt these words have been taken, or rather the whole definition has been taken, from the Bengal Tenancy Act;* but this is no reason why you should retain the same words in this clause if the sense of the Council is that hereafter there may be some misapprehension, and that there may be some

* i.e., Act VIII of 1885.

[*Maulvi Saiyid Muhammad Fakhr-ud-din.*]

bone of contention on that ground. I do not understand the Hon'ble Mr. Kerr's meaning in pointing out to me that by putting the words 'of a holding' after the word 'area,' there may be a difficulty. 'Holding' no doubt has been defined in clause 5 sub-clause (8), but if these words 'of a holding' be added after the word 'area,' the meaning of this sub-clause would only be made clearer. The definition of 'holding' would remain unchanged, and the area of the holding will mean the area covered by the holding which forms the subject of a separate tenancy; and if that area exceeds 33 acres, it will be considered to be a tenure. On these grounds, Sir, I beg to submit that the words 'of a holding' should be added after the words 'area,' and to ask that the amendment may be put to the votes."

A division was then taken, with the following result:—

Ayes—9.

The Hon'ble Maharaj Kumar Gopal Saran Narayan Singh.
" Raja Rajendra Narayan Bhanja Deo.
" Babu Deba Prasad Sarbadhikari.
" Mr. Saiyid Wasi Ahmad.
" Maulvi Saiyid Muhammad Fakhr-ud-din.
" Babu Hrishikesh Laha.
" Mr. Reid.
" Mr. Das.
" Khan Bahadur Maulvi Sarfaraz Hussain Khan.

Noes—61.

The Hon'ble Mr. Sharle.
" Raja Kisori Lal Goswami.
" Mr. Greer.
" Mr. D. J. Macpherson.
" Mr. E. W. Collin.
" Mr. Stevenson-Moore.
" Mr. Chapman.
" Mr. Fermoy.
" Mr. Kerr.
" Mr. Stephenson.
" Mr. Madden.
" Mr. Kadler.
" Mr. Morshead.
" Sir Frederick Lely Halliday, Kt.
" Mr. Cunning.
" Mr. Bompas.
" Mr. H. McPherson.
" Babu Janaki Nath Bose.
" Maharaja Bahadur Sir Prodyot Kumar Tagore, Kt.
" Sir Frederick George Dumayne, Kt.
" Kumar Sheo Nandan Prasad Singh.
" Babu Bhupendra Nath Basu.
" Lt.-Col. G. Grant-Gordon.
" Babu Kirtyananda Sinha.
" Mr. Apcar.
" Mr. Norman McLeod.
" Mr. Stewart.
" Mr. Golam Hossein Cassim Ali.
" Maulvi Saiyid Zahiruddin.
" Babu Sheo Shankar Sahay Bahadur.
" Babu Baikuntha Nath Sen Pandar.

[*Mr. M. S. Das; Babu Hrishikesh Laha; Mr. Kerr.*]

The following Members were absent:—

The Hon'ble Mr. Mitra.
" Maharaja Manindra Chandra Nandi.
" Dr. Abdullah-al-Mamun Suhrawardy.
" Mr. Dutt.
" Babu Mahendra Nath Ray.
" " Braj Kishor Prasad.
" Mr. Dip Narayan Singh.
" Babu Bal Krishna Sahay.

The Hon'ble Sir Bijay Chand Mahtab, Maharajadhiraja Bahadur of Burdwan, and the Hon'ble Rai Sitanath Ray Bahadur abstained from voting.

The result of the division was *ayes* 9, *noes* 31, and the motion was therefore lost.

The following motion was, by leave of the President, withdrawn:—

16. The Hon'ble Mr. M. S. Das to move that the words "of a holding" be inserted after the words "area" in line 1 of clause 5 (5).

17. The Hon'ble Babu Hrishikesh Laha moved that the words "in the same estate" be inserted after the word "tenant" in line 1 of clause 5 (5).

He said:—

"The area of 33 acres cannot evidently mean parcels of land situated in different districts under different proprietors in different estates, or even under the same proprietor in different estates in different districts. The words 'exceeds thirty-three acres' in this clause presuppose that, so long as the holding does not exceed that quantity of land, it remains a compact holding in the same estate under the same proprietor, but as soon as it exceeds that quantity it becomes a tenure, and the tenure-holder can assert his right as such if he has 75 bighas in Bengal and 25 bighas in Kujang. This, I believe, is not the intention of the Bill, but as the sub-clause, as it stands, is vague, I move that the words 'in the same estate' be added in order to make the meaning clear."

The Hon'ble Mr. KERR said:—

"Sir, I beg to oppose this motion on the same ground, as I have already explained in connection with the last amendment, that it is undesirable to allow a departure from the provision of the law which has worked in Orissa for nearly a quarter of a century.

"The Hon'ble Member asks us to provide that where the area held by a tenant in the same estate exceeds 33 acres, the tenant shall be presumed to be a tenure-holder until the contrary is shown. Now the estate is the unit responsible for the payment of Government revenue; it is the unit which is recognised for this purpose in the Land Registration Act* and in the Partition Act†: but, while it is suitable enough for the object for which it is intended, it is unsuitable for any other purpose and particularly for the purposes of tenancy law. Orissa is a country with small proprietors, and the sub-division of estates owing to the operation of the laws in force is a growing evil; but this is not the whole truth. There are also very large estates, and the large estates in Orissa are represented in this Council by the Hon'ble Maharajadhiraja Bahadur of Burdwan, the Hon'ble the Raja of Kanika and the Hon'ble Mover of this amendment. An estate therefore may comprise a few acres of land in a village, or it may comprise a *pargana* or *tilla* consisting of hundreds of villages. The term 'estate' has therefore no relevance to any considerations which apply when we come to deal with tenancies. The estate is a unit which concerns

* *i.e.*, Bengal Act VII of 1876.
† *i.e.*, Bengal Act V of 1897.

[*Mr. M. S. Das; Rai Sheo Shankar Sahay Bahadur; the President.*]

the proprietors only in their dealings with the Collector in regard to the payment of land-revenue. I do not know whether the Hon'ble Mover of this amendment wishes to increase the number of tenure-holders or to increase the number of raiyats, but it really does not matter. What we have to look at in deciding whether a man is a tenure-holder or a raiyat is whether his individual tenancy consists of more than 33 acres or not. There are not infrequent cases in which tenants hold under more than one estate, that is to say, the rents are paid jointly to the proprietors of more than one estate. These tenancies are known in Bihar as *shamilat* tenancies, and I can see no reason why this general provision of law should not apply to such tenancies as well as to the ordinary cases of tenancies which lie entirely within the ambit of one estate. The point which I am endeavouring to explain to the Council is that, for present purposes that is to the purpose of deciding whether a man is a tenure-holder or a raiyat, the question whether he holds in one estate or more is irrelevant. What we have to deal with is the area of land comprised in the particular tenancy in respect of which it is a question whether the man is a tenure-holder or a raiyat. The proposal of the Hon'ble Member would only complicate the simple issue, and it is impossible to say what its precise effect would be. I would, therefore, ask the Council to adhere to the provision of the law which has been in force in Orissa for nearly a quarter of a century and to decline to make the alteration proposed by the Hon'ble Mover."

The motion was then put and lost.

Clause 6.

The following motions were, by leave of the President, withdrawn:—

18. The Hon'ble Mr. M. S. Das to move that sub-clauses (*i*) and (*n*) of clause 6 be omitted.

19. The Hon'ble Rai Sheo Shankar Sahay Bahadur to move that the words "or as raiyat" be inserted after the words "tenure-holder" in line 6 of clause 6 (*a*).

20. The Hon'ble Rai Sheo Shankar Sahay Bahadur to move that clause 6 (*c*) be omitted.

Clause 10.

21. The Hon'ble Mr. M. S. Das moved that the words "or by contract" in line 2 of clause 10 be omitted.

He said:—

"The clause in which it is sought to make an amendment is one which aims at preventing frequent enhancements and lays down that, one enhancement having been made, a second one ought not to be allowed within a certain time, viz., 15 years. The clause speaks of enhancement having been made by the Court or by contract. When an enhancement has been made by an order of the Court, it should not be allowed to be received, or a second enhancement made within 15 years, and so also in the case of enhancement by contract. I have three motions, numbers 21, 22 and 24. If Your Honour will kindly allow me, I will take them up together and point out the lines in which, in my humble opinion, the alteration of the clause is necessary, leaving it to the Hon'ble Member in charge to see whether he can accept the principle, and, if so, how he would alter the clause, and whether he would accept the proviso in amendment 24, or in some other form."

The PRESIDENT said:—

"I do not think that it would be convenient to the Hon'ble Member to discuss the whole of the amendments together, but, at the same time, there will be no objection to his discussing the principle with reference to this one, and explaining to the Council how he would like this clause to be worded."

[*Mr. M. S. Das ; Mr. Kerr.*]

The Hon'ble MR. DAS continued:—

"All that I mean to say refers to the case of a contract, a man makes a contract and afterwards there is a fresh contract, say for instance, in regard to improvements. A man makes a contract that he should pay so much for the tenure to the zamindar; afterwards he enters into a fresh contract with the zamindar that, "if you will make some irrigation here, or if you will make such and such changes, I will give you Rs. 500 more." In that case, there ought to be a further enhancement allowed. I cannot see that that is not altogether an enhancement in the strict legal sense of the term. It is really entering into a fresh contract on new considerations, and that is what it is sought to secure by having these alterations. If that be not acceptable to the Hon'ble Member in charge, I hope he will accept the proviso suggested in amendment No. 24, viz.,—

> 'Provided that nothing in this section shall apply to a contract by which a tenure-holder binds himself to pay an enhanced rent in consideration of an improvement which has been, or is to be, effected in respect of his tenure by, or at the expense of, his landlord.'

"Of course that does not at all clash with the principle which is meant to be secured by the clause. It actually contemplates a case outside the purview of the clause as it stands, and we have cases of reclaiming waste land, in which the tenants may want to enter into a fresh contract. Then, there would, if the clause stands as it now is, be difficulty in having such a fresh contract. We have often been told that the Bengal Tenancy Act* has stood the test of 27 years. I have often heard this here and elsewhere, and that therefore it must be shown why it should be altered. We also know that the Bengal Tenancy Act* has stood the test in creating infringements on other people's rights and creating a revolution in Orissa during the last revisional settlement, and that it aroused Mr. Maddox's anxiety to remedy evils that had been created by this settlement, and yet we are repeatedly told that the Bengal Tenancy Act* has stood the test of 27 years. That is actually begging the question. We came here to legislate, to have a Code which is particularly suited to the conditions of Orissa, and we deny that the Bengal Tenancy Act* should be adored, worshipped and strictly followed because it has been successful in Bengal; and the point we make is that we know that the Bengal Tenancy Act* will not do in all respects, for, in some, it has done mischief in Orissa. We can actually show that there are conditions in Orissa to which the Bengal Tenancy Act* ought not to apply, and in these circumstances I hope the Hon'ble Member in charge will see his way to accept my amendment either as a proviso or in any other form so as to give effect to the proposition as I have stated it; that is, so as to provide for the further contract of a different nature altogether."

The Hon'ble MR. KERR said:—

"I should like to draw the attention of the Council to the fact that clause 10 of the Bill corresponds with section 9 of the Bengal Tenancy Act,* and, I am afraid, I shall again have to annoy the Hon'ble Mr. Das by referring to the virtues of the Bengal Tenancy Act.* Section 9 of the Bengal Tenancy Act* has not only been in force in Bengal for the last 27 years, but, so far as I can gather from the commentaries on the Act, it has never been the subject of any judicial ruling of the High Court. Now when a section has been in force for 27 years and has never been brought before the High Court, there is a very strong presumption that that section has proved extremely suitable, and I think that this Council should be very chary of altering it. The general object of the section, of course, is to prevent too frequent tampering with the rent of tenure-holders. The general object of the amendments, which have been brought before the Council, is to afford more frequent opportunities of tampering with those rents, and this, I think, is most undesirable. It is for the movers of the amendments to bring forward

* *i.e.*, Act VIII of 1885.

[*Mr. M. S. Das; Mr. Saiyid Wasi Ahmad.*]

good reasons for showing that it is necessary to allow more frequent alteration of tenure-holders' rents than was considered necessary by the legislature who passed the Bengal Tenancy Act* in 1885. It was then considered that it was quite sufficient to allow a tenure-holders' rent to be altered once in 15 years, and this, I think, is a sound principle. When a superior proprietor divests himself of his rights in favour of a tenure-holder, it is only right that that tenure-holder should have a certain security of tenure. It is not only desirable in the interests of the tenure-holder himself, but also in the interests of the raiyats of the estate, because it is perfectly obvious that, whenever an enhancement is made in the rent of a tenure-holder, he is bound, in his own interest, to pass it on to the raiyat. Now 15 years is, generally speaking, the period within which the rents of occupancy raiyats cannot be altered, and it is logical therefore that the same period should apply in the case of the rents of tenure-holders. In the particular amendment which is now before the Council the Hon'ble Mr. Das proposes that, where a tenure-holder's rent has been fixed by contract between the parties, it should be open to the Courts to raise that rent as frequently as it pleases. It seems to me that this proposal is not only undesirable for the reasons which I have already given, but also unnecessary. The proprietor and the tenure-holder make their contract with their eyes open. Under the law as it stands at present, they know that the rent for which they have contracted will not be liable to revision by the Court for 15 years, and they take this circumstance into consideration in fixing the rent. It is clear that great uncertainty would be introduced into contracts of this description if the parties knew that the contract was liable to revision by a Court immediately after it was made. I submit, therefore, that the Hon'ble Member's amendment would introduce an undesirable element of uncertainty into contracts, and should be rejected by the Council. I would also add that I would repudiate the Hon'ble Mr. Das' suggestion that serious evils were caused to Orissa by the revisional settlement, or that Government ever conceded that such was the case either with that settlement or with the one that preceded it. We claim that these settlements have done untold good for Orissa in every way, even though—as was bound to be the case in such a large area—some mistakes may have occurred here and there."

The Hon'ble Mr. Das said:—

"I have simply to say this much. I expected, Sir, that there would be no objection. Believing as I do that the Bengal Tenancy Act* is responsible for all the labour which the Hon'ble Member in charge of the Bill, and the Hon'ble Mr. Maddox have taken to have a special Act, I expected that there would be no serious objection to making matters plain. As regards the objection which has been stated in other quarters, that, if the wording of the Bengal Tenancy Act* is altered in the slightest degree, the probability is that the Courts would infer that there was some special intention in making this alteration, and consequently would construe the Bengal Act differently, that is an argument which has force only in cases where the Bengal Tenancy Act* is used side by side with another Act, and in which a certain section has been altered in a slight degree; but when it is clear, as it will be from the preamble and other parts of the Orissa Tenancy Bill, that it is only meant for the special circumstances and conditions of a particular country and people, certainly there will be no difficulty whatever, for it will be obvious that Government was driven to the necessity of a special Code by the experience that the Bengal Tenancy Act* will not do in all things for Orissa.

The motion was then put and lost.

The following motions were, by leave of the President, withdrawn:—

22. If motion No. 21 be not carried, the Hon'ble Mr. Das to move that the words "on the same grounds" be inserted after the word "Court" in line 3 of clause 10.

23. The Hon'ble Mr. Saiyid Wasi Ahmad to move that the words "or during which enhancement has so commenced" be inserted after the words "so enhanced" in line 4 of clause 10.

---

* i.e., Act VIII of 1885.

[*Mr. M. S. Das; Mr. H. McPherson; Mr. Saiyid Wasi Ahmad.*]

24. The Hon'ble Mr. M. S. Das moved that the following be added as a proviso to clause 10, namely:—

"Provided that nothing in this section shall apply to a contract by which a tenure-holder binds himself to pay an enhanced rent in consideration of an improvement which has been, or is to be, effected in respect of the tenure by, or at the expense of, his landlord."

He said:—

"Sir, I have already explained that a proviso should be added to this clause which would make it clear. It is now only clear in a certain class of cases, instead of generally, and leaves the contract open. It says 'nothing shall apply to a contract whereby a tenure-holder binds himself to pay an enhanced rent in consideration of an improvement which has been, or is to be, effected in respect of the tenure by, or at the expense of, his landlord.'

"Of course, the general objection will be that the clause really means that. That may be."

The Hon'ble MR. H. MCPHERSON said:—

"May I be allowed to interrupt and explain? The clause is clear on the point. When there has been an enhancement by the Court or by contract, the rent cannot be again enhanced, *by the Court*, within 15 years. All the clause means is that, in the absence of a contract, the landlord cannot go to the Court and sue for an enhanced rent. If, five years after an enhancement, the landlord induces the tenure-holder to enter into a contract for an additional enhancement on account of fresh improvements, there is nothing in the Bill which can prevent him from doing so. The clause only refers to what can be done in the Courts in the absence of contracts. The clause is perfectly clear and covers all that you ask for."

The Hon'ble MR. DAS said:—

"That is what I do not understand, Sir. The Hon'ble Member must understand that he is legislating for the most backward and stupid people. We are very slow of comprehension, as can be seen in my own case; then why not give us a little more light?"

The amendment was then put and lost.

Clause 12.

The Hon'ble Mr. Saiyid Wasi Ahmad moved that the following be inserted at the end of clause 12 (*1*), namely:—

"provided that the entire tenure, and not a portion of it, is transferred or bequeathed."

He said:—

"Clause 12 runs thus: 'Every permanent tenure shall, subject to the provisions of this Act, be capable of being transferred and bequeathed in the same manner and to the same extent as other immovable property.'

"If a tenure-holder is permitted by this clause to transfer or bequeath either all or any portion of his holding, the result will be that it will necessarily add to the number of holdings, that is to say, instead of one, it is possible that 50 or 100 separate holdings may be created if portions are allowed to be sold or bequeathed. It will also, if a holding is allowed to be divided and sub-divided, increase the number of suits that the zamindar or the superior landlord would have to institute against the defaulting tenants. My amendment is that, if a permanent tenure is to be sold, it should be sold in its entirety. Suppose that this amendment of mine is not accepted by the Hon'ble Member in charge of the Bill, what will be the result? If a tenure-holder seeks to sell his one holding

to, say, a hundred persons, the holding will go on getting smaller and smaller, and the difficulty of the zamindars will naturally and necessarily increase. It is for these reasons that I wish to add a provision towards the end of this clause that whenever any such sale does take place, the entire holding should be sold and not a portion."

The Hon'ble MR. H. MCPHERSON said :—

Before I discuss this amendment, I should like to make a personal explanation to the Hon'ble Members from Bihar. When I referred to the lively interest which they had taken in the Bill, I did not mean them to believe that a general interest in our proceedings would be other than welcome. What I was thinking of was an interest that ran to over one hundred amendments out of two hundred and sixty, many of which betrayed very imperfect acquaintance with the local conditions of Orissa and some of which appeared to be opposed to the interests and wishes of the representatives of Orissa. The present amendment will illustrate what I mean.

'It is one of a series which has been proposed by the Hon'ble Members from Bihar with the object of placing a veto on the transfer of portions of tenures. Amendments Nos. 28, 38, 41 and 50 are similar, and there may be others. The amendments are not in accordance with the local custom of Orissa nor with the provisions of section 27 of Act X of 1859* which contains the existing law on the subject. Transfers of portions of tenures, by sale, gift succession and otherwise, are specifically referred to in that section. Such transfers of portions of tenures do not involve any division or distribution of the rent payable, and this has been made quite clear in the redraft of clauses 13A to 13D which I propose later to place before the Council. I would ask the Hon'ble Member, in the circumstances explained, to withdraw this amendment.

The amendment was then, by leave of the President, withdrawn.

The "fresh amendments," † numbers 1A to 13A.

The Hon'ble MR. H. MCPHERSON said :—

"May I have your permission, Sir, to move the fresh amendments† of the clauses relating to the transfer of tenures and holdings and cognate matters, which have been entered in my name on the separate list that has been laid on the table this morning? They are numbered 1A to 13A."

The PRESIDENT said :—

"The rules are suspended in order to enable the Hon'ble Mr. McPherson to move the fresh amendments which Members will find on the table."

The Hon'ble MR. H. MCPHERSON said :—

"There are no less than 62 amendments dealing with clauses 13A, 13B and 13C which refer to the transfer of tenures, and with clause 25A which deals with the transfer of occupancy-rights. Nearly one-half of these amendments have been put forward by Hon'ble Members from Bihar. The remainder which have been filed by the Orissa Members cover all the debatable ground of the transfer clauses and have been very carefully considered by my hon'ble friend Mr. Kerr and myself with the

* i.e., the Bengal Rent Act, 1859.

† These amendments (numbered 1A to 13A), which will be found set out in full, in the relevant positions, in the report of the debate on the Bill contained in the proceedings of the 21st March and subsequent dates, were printed on a separate paper and placed before the Council for the first time on the morning of the 20th March. They embodied several of the suggestions put forward by Hon'ble Members in the amendments sent in by them in regard to clauses 13A, 13C and 25A; but as they were not included in the original amendment list, and as there had been no time to circulate them for the information of Members before the meeting of the 20th March, they were referred to in the debate as "fresh" amendments.

object of finding a solution which will meet the reasonable objections of their proposers. The redrafts of clauses 13A, 13B, 13C, 25A and 91, together with the new clauses 13CC, 13D, 13E and certain consequential amendments, represent the result of our joint deliberation with the proposers of the Orissa amendments, and have been accepted by them as a satisfactory solution. The following are the chief points in which the redrafted clauses differ from those in the Bill as amended in Select Committee:—

"In clause 13A, dealing with transfers by succession, we have made an addition whereby an opportunity is given to the landlord to appear and be heard, and registration is not allowed till the Collector has satisfied himself that the applicant is the true heir or successor.

"In clause 13C, dealing with transfers of tenures other than those specified in clause 13B, we have provided for an alternative fee which minimises the danger of a fraudulent understatement of the consideration-money in deeds of transfer. We consider this preferable to throwing on the Collector the burden of ascertaining true market value in all cases. Several of the original amendments relate to market value.

"Sub-clause (*3*) of the same clause has been amended so as to leave the burden of proof of custom neutral. The complaint was made that the burden of proof had been laid unfairly upon the landlord.

"In new clause 13CC we have made it clear that the transfer of a portion of a tenure and its registration do not constitute a division of a tenure such as is contemplated in clause 91.

"Clause 91 has been redrafted so as to accord with the existing clause 88 of the Bengal Tenancy Act.*

"Sub-clause (*3*) of clause 25A, dealing with occupancy holdings, has been amended on the same lines as sub-clause (*3*) of clause 13C, but the explanations have been retained, for I regard them as essential to the acceptance of the compromise now proposed. Sub-clause (*4*), which made the orders of the Collector final, subject to revision, has been excised, and this leaves the orders of the Collector subject to the ordinary course of appeal prescribed in clause 213. Sub-clause (*5*), which was added because the orders of the Collector were made final in the preceding sub-clause, has also been excised. A new sub-clause has been added which removes permanently-settled estates from the operation of clause 25A, and, with respect to these areas, the *Illustration* which stood in the original Bill as *Illustration* (*1*) to clause 246 has been restored as *Illustration* (*1a*). The justification for this exception is that the evidence of custom of transfer, on which the provisions of clause 25A were based, was collected in the course of the revision settlement from the temporarily-settled area. We have no sufficient information regarding the practice of transfer in permanently-settled areas, and have therefore left it to be governed by existing custom or usage, without attempting to define that custom or usage."

"With this explanation I propose to put, clause by clause, in their proper order, the redrafts or new drafts contained in the separate paper which has been placed before Hon'ble Members this morning. If they are accepted by the Council, I gather that the amendments standing in the names of other Hon'ble Members will automatically fall to the ground, but of course it will be open to any member to bring forward any point which he has raised in his amendment.'

Clause 13A.

1A. The Hon'ble Mr. H. McPherson then moved that, for the reasons explained above, the following be substituted for sub-clauses (*1*) and (*2*) of clause 13A, namely:—

(*1*) In the case of every transfer of a tenure or portion of a tenure by succession, the landlord shall recognise the transfer, provided that the transferee shall pay him a fee amounting to rupees two, except in the case of a *bajaftidar* when the fee shall be rupee one.

* i.e., Act VIII of 1885.

[*Mr. M. S. Das ; Mr. H. McPherson.*]

(2) If, in any such case, the landlord refuses to accept the requisite fee, the transferee or his successor in interest may deposit such fee with the Collector, and, at the same time, apply for registration of the transfer. The Collector, after giving notice to the landlord to appear and be heard, shall decide whether the applicant is the successor or not; and, if satisfied that such applicant is the successor, he shall cause the fee to be delivered to the landlord in the prescribed manner, and shall, by an order in writing, declare that the transfer has been duly registered.

The Hon'ble MR. DAS said:—

"Sir, I beg to submit that the introduction of these fresh amendments at this stage handicaps us very much. This Bill has been in the hands of a Select Committee, and I was told that this Bill has been thought over by Government for years and that the Select Committee went through it and recast it; and now, when we are actually considering the Bill, certain important amendments are made, and we find them on the table as we come to this Council. In justice and fairness to us, I think certainly a little more time ought to have been given to us. When I moved the other day that this Council had not time enough to discuss this Bill, and therefore that further proceedings in connection with this Bill should not be moved in this Council, I was told that this Council was certainly the only competent Council that could deal with it, and now we are faced with amendments that are brought in at this stage; and unless the Hon'ble Member in charge of the Bill wishes us to take up the consideration of these amendments on some subsequent day, it really comes to this that certain amendments are made on certain important provisions of the Bill, and that we are required to proceed with them immediately, if this does not justify my saying that actually this Bill is being rushed, I do not know what does. That is the condition in which Orissa is placed here. Highly paid official members of the most eminent service in the world have laboured for years, and then they produce a Bill which undergoes considerable change in the Select Committee, and now, at the last moment, we are faced with certain further changes of an important character. And I submit that certainly these changes ought not to be discussed to-day."

The Hon'ble MR. H. MCPHERSON said:—

"Sir, may I rise to explain briefly what the situation really is? If regard be had to this new redrafted clause 13A which has now been proposed by me and if the amendments that stand under the heading of clause 13A in the 'List of Amendments' be examined, it will be found that what has been done is merely to accept some of these amendments. I have thus merely anticipated some amendments proposed by Hon'ble Members. I do not see therefore how it can be suggested that there is any question of rushing a new draft through the Council. Surely, to ask the Secretary to redraft a clause so as to meet the wishes of Hon'ble Members and to have then amendments thereby put into acceptable shape for them is no very great crime on my part. As redrafted, the the new clause covers amendment 34 which stands in the name of the Hon'ble Raja of Kanika, and 35 which stands in the name of the Hon'ble Hrishikesh Laha, while another redraft covers amendment 37 which stands in the name of the Hon'ble Rai Sheo Shankar Sahay Bahadur. We are not making any departure from the draft clauses of the Bill, except so far as is calculated to meet objections raised by the amendments of Hon'ble Members, and I expected that Hon'ble Members would have welcomed the step we have taken which is in the nature of a concession to them. I do not see in the least why we should not consider the redrafted clauses now, but we can consider the original amendments first, if Hon'ble Members so prefer."

---

* i.e., Act VIII of 1885

[*Rai Sita Nath Ray Bahadur; Mr. Kerr; Mr. Apcar; Babu Bhupendra Nath Basu.*]

The Hon'ble RAI SITA NATH RAY BAHADUR said:—

"I beg to remind the Council, Sir, that the Bill has been in the hands of the Government for several years, and it has undergone several modifications and alterations in the Select Committee. I don't quite understand the position, but it seems somewhat strange that at the last moment serious amendments should be presented to us without notice, and that we should have no time to go through the amendments or study them. All that I can say is that it is an unusual procedure for the Government or, for the matter of that, for the Hon'ble Member in charge of a Bill to move amendments after the Select Committee stage has passed by. Moreover, it is a serious departure from the principles which have been recognised in the Bengal Tenancy Act* that a portion of the tenure should be allowed to be sold and the landlord should be compelled to recognise transfer of a portion of the tenure. It is against the spirit of the Bengal Tenancy Act* to compel the landlord to recognise transfer of a portion of a tenure.

The Hon'ble MR. KERR said:—

"My object in intervening at this stage is simply to explain the change that has been made in the original Bill by the Hon'ble Mr. H. McPherson. The clause now before us deals with the transfer of tenures by succession, and it provides that the landlord shall be required to recognize the transfer, provided he is paid certain fees; and, if, in any case, he refuses to accept the fee, the transferee or his successor in interest shall apply to the Collector. The original Bill says that the Collector shall thereupon cause the fee to be delivered to the landlord in the prescribed manner and shall, by an order in writing, declare that the transfer is duly registered.

"It was brought to our notice that a fraudulent transferee might come up and represent himself as the successor of the original tenant, and we therefore thought it was advisable to meet that particular objection. We now provide that the Collector shall give notice to the landlord to appear and be heard, and shall decide whether the applicant is the real heir or not; and, if the Collector finds that the applicant is the real heir, he shall cause the fee to be delivered to the landlord in the prescribed manner, and shall, by an order in writing, declare that the transfer has been duly registered.

"That is the only change which has been made in the provisions of clause 13A, and the only point that the Council need consider with regard to clause 13A."

The Hon'ble MR. APCAR said:—

"I have not been able to hear distinctly what has been said.

"Do I understand aright that these proposals made by the Hon'ble Mr. H. McPherson are in the nature of a compromise embodying the proposals made in the amendments sent in by various Members of the Council? If I am correct in my supposition, I do not see why the Hon'ble Member could not, as the proceedings went on and in the course of the debate, have made these proposals; but, instead of doing that, these clauses have been submitted before the meeting in a form which is acceptable to Government. I may state that, for my own part, I see no objection to the proposals made, or to the manner in which they have been submitted."

The Hon'ble BABU BHUPENDRA NATH BASU said:—

"I really do not understand the reason why Mr. Das complains. It is the most extraordinary complaint that I have ever heard in this Council. When a Bill is proceeded with, we, non-official Members, bring in amendments, and these amendments, when necessary, are changed as to their language, and sometimes they are adopted by the official Members; if they are adopted, these

* *i.e.*, Act VIII of 1885.

amendments are put in proper language and placed before the Council, and we are only too glad to accept them. It is rather a matter of congratulation that the amendments suggested by some of our non-official friends have been accepted by the Government and put forward in language (approved by our Secretary) which is more consistent with the general drafting of the Bill than are the amendments put forward by non-official Members themselves. In that view I do not see that there should be any reason for complaint; on the contrary, these amendments should be welcomed as conceding, to a great extent, the objections that have been raised against the Bill as originally drafted.

"I therefore support these amendments as put forward."

The Hon'ble RAI SHEO SHANKAR SAHAY BAHADUR said:—

"I have got several amendments, with regard to clauses 13A, 13B and 13C, which refer to the heritability and transferability of the tenures. They have replaced clauses 13, 14, 15 and 16 of the original Bill as introduced in the Council. I wonder if the Select Committee fully realized the changes that they have made; for I find that in their report, paragraph 5, they speak as if they have made no material changes in the principle of the Bill. In my humble opinion, Sir, by the new clauses 13A, 13B and 13C as drafted by the Select Committee, and even as revised now by the Hon'ble Member in charge of the Bill, changes of far-reaching character have been made which will seriously affect the interests of the landlords, and altogether change the existing law on the subject. It appears that, in the three districts under consideration, there are certain tenures which should obviously be treated differently from those created by the landlords. It was proposed to concede to these tenure-holders a higher status than that of the ordinary tenure holders and to lay down clearly the incidence of such tenures and to facilitate the registration of all tenures on payment of proper fees. The Hon'ble Mr Maddox in his report, dated 6th April 1909 (printed paper No. 2), after going through the matter, laid it down as his opinion and that of the local Orissa Committee that, with regard to the incidence of the tenures, the provisions of the Chota Nagpur Tenancy Act* should be extended to Orissa with certain modifications. He also proposed that such tenures as were transferable without the consent of the landlord should be clearly specified. It was also proposed to fix a maximum fee for registration. The different tenures which are saleable without the consent of the landlord, and those which are not so saleable, are stated at page 36 of Paper No. 2. A Bill was drawn up on the lines of the report of the Hon'ble Mr. Maddox, and the sanction of the Government of India was obtained. A reference to the original Bill, as introduced in Council, will show that the object of the proposed legislation was not to change the law regarding the incidents and nature of any tenure, but to fix a prescribed fee payable to the landlord and to facilitate registration where tenures were transferred, either when they were transferable without the consent of the landlord or when, where not so transferable, they were transferred with his consent. This is clear also from the Statement of Objects and Reasons, paragraph 18.

"If the Select Committee had stuck to the programme set out in the report of the Hon'ble Mr. Maddox and in the Statement of Objects and Reasons of the Bill, there would have been no serious complaint. But if we read the new clauses, as drafted by the Select Committee, and compare them with the old clauses, we find that the Select Committee has gone much beyond the original programme. It has altered the whole principle of the proposed legislation and laid down laws which are unjust and unfair to the landlord. For instance, under clause 13A, as drafted by the Select Committee, all tenures heritable or non-heritable are made heritable, and the landlord can, on no account, and under no circumstances, oppose the registration of a non-heritable tenure and has no remedy. By one stroke of the pen all tenures of every kind and description are made heritable. Sir, if a landlord has created a tenure on the distinct agreement that it shall be for life or for a shorter period and be not heritable, the contract must, by operation of this clause as drafted by the Select

* i.e. Bengal Act VI of 1908.

Committee, and as revised by the Hon'ble Member in charge, be invalid. Then according to the language of the clause, read with clause 91, it will appear that non-heritable tenures are not only, by operation of this clause, heritable, but divisible as well without the consent of the landlord. I am glad to find that this serious infringement of principle is recognised, and that in the re-drafted clause the Hon'ble Member in charge of the Bill lays down that no tenure shall be divisible without the consent of the landlord. Clause 13B of the Bill enumerates certain tenures which are transferable by sale. I have nothing to say against this if these tenures have been found on inquiry to be of a transferable character. But here also the clause suggests that the landlord is bound to recognize the splitting up of the holding. The redrafted clauses, however, have remedied this defect. Then clause 13C makes all tenures or portions of tenures of every kind and description transferable, and introduces a new law and procedure and shifts the onus of the custom of transfer from the transferee to the landlord.

"I submit that these are drastic changes. The Select Committee have given no reason for these changes. The Hon'ble Member in charge of the Bill, in the lucid speech he made in the Council on the 9th of January last, did not say a single word from which it could be inferred that these drastic changes were proposed to be introduced in the new Bill. No reason has been given as to why the provision in the Bill as introduced in Council, which laid down distinctly that transfer by sale, gift or exchange of all tenures, except certain specified ones, were invalid unless and until made with the consent of the landlord, has been removed from the Bill. A new law is being introduced declaring tenures of all and every kind to be heritable and divisible.

"I submit there is no justification for these changes, which are against the established law of the country and which interfere with the vested rights of the landlord. You may facilitate registration of heirs and successors, you may prescribe a fee payable in such succession, but you have no right to make a tenure heritable which is not heritable.

"The Hon'ble Member in charge of the Bill, in submitting his redrafted clause 13A, has met the objects of various amendments on the agenda. He has gone far, but not far enough. He has refused to accept many amendments. I beg therefore to suggest that these redrafted clauses be taken into consideration with the amendments that have not been accepted. Those Members whose amendments have been accepted will not press them. Those who are not satisfied will put forward their original amendments for the consideration of the Council."

The Hon'ble MAULVI SAIYID MUHAMMAD FAKHR-UD-DIN said :—

"It appears that some of the Hon'ble Members have been unnecessarily uncharitable to the Hon'ble Member in charge of the Bill. The results of some of the various amendments proposed by certain Members have been incorporated in these amendments which are now before us. The Hon'ble Member in charge of the Bill, when he moved his own amendment, himself suggested that his amendments might be considered in the light of the several amendments proposed by other Members of the Council, and if these Hon'ble Members find that there are still some defects, they could very well propose their own amendments in connection with these amendments which are now put forward by the Hon'ble Member in charge. It appears to me that if these amendments which are now proposed by the Hon'ble Member in charge are accepted, a series of amendments,—and some of those amendments no doubt stand in my name, too,—will be done away with. We should not throw aside these redrafted clauses simply on the ground that the Bill has been for a long time under consideration, or because, even in the report of the Select Committee, these amendments were not proposed by the Hon'ble Member in charge. We ought to look at the substance of the amendments now proposed, and, if we find that these amendments go to meet our wishes, then it is highly desirable that they should be accepted; but if any suggestion seems desirable

[*Khan Bahadur Maulvi Sarfaraz Husain Khan; The President; Mr. Apcar; Mr. M. S. Das; Babu Janaki Nath Bose.*]

in order to bring about any further change, we may be allowed to offer our remarks in regard to them.

"I therefore think that these amendments should be taken into consideration."

The Hon'ble KHAN BAHADUR MAULVI SARFARAZ HUSAIN KHAN said :—

"I also think that they ought to be taken into consideration. They will save time."

The PRESIDENT said :—

"I will explain to the Council the effect which I think will follow from putting the Hon'ble Mr. H. McPherson's amendments at this stage.

"I confine myself for the moment to the amendments which have been proposed with a view to the modification of the first two sub-clauses of clause 13A of the Bill. They are amendments Nos. 26 to 35. The redrafted clause now proposed by the Hon'ble Mr. H. McPherson, as has been explained by him, embodies a certain number of these amendments. There are others which it does not embody and which have not been accepted by the Government. When the redrafted clause is put to the Council—if it is carried—the original amendments which it covers will fall to the ground. I suggest that it should be discussed now and put to the Council. I take it that the Members who have moved original amendments, but who are satisfied with the redrafted clause, will not press their amendments, as explained by the Hon'ble Rai Sheo Shankar Sahay Bahadur. The position, however, will be that, if they are not satisfied, they will oppose it; if it is carried, there is an end of all the amendments covered by it; if it is not carried, then the original amendments will naturally not fall to the ground but will come on for discussion."

The Hon'ble MR. APCAR said :—

"Can amendments to the fresh proposals put forward as a compromise by the Government be now moved by Hon'ble Members?"

The PRESIDENT said :—

"No; I take it that if Hon'ble Members wish to press their original objections, they can do so now both against the original clause and against the clause as redrafted by the Hon'ble Mr. H. McPherson, and refuse to have these carried."

The Hon'ble MR. DAS said :—

"I do not say that these amendments should not be accepted, but what I want to make clear is that I have not intelligence enough to actually take their bearings within so short a time. There are Hon'ble Members who have said that these fresh amendments embody concessions. I do not know whether these Hon'ble Members have actually studied the Bill and whether they can say in what manner these amendments are concessions. Of course general remarks of that nature, viz., that they are concessions and matters for congratulation,—for people who do not understand the details,—are very easy. I should like to hear from these Hon'ble Members some remarks pertinent to the subject showing that they had studied the Bill, and then certainly their congratulations might be of value to us. To congratulate when one is in the dark and does not understand the mischief that perhaps is being done, is easy enough."

The Hon'ble BABU JANAKI NATH BOSE said :—

"I can assure the Members of this Council that clauses 13A, 13B and 13C were very carefully considered by the Select Committee and they are the

[*Mr. M. S. Das; the President; Babu Janaki Nath Bose; Rai Baikuntha Nath Sen Bahadur; Mr. Saiyid Wasi Ahmad.*]

result of anxious deliberation. The Hon'ble Mr. Das says that the proposed new clauses make a good deal of change in the law as framed by the Select Committee. Let us consider this question 'on the merits' as we lawyers say:—

"*Clause 13 A (1).*—I say the only difference is that the words 'shall recognize' are used instead of the words 'shall be required.' That is the only change, Sir. In sub-clause (2), instead of the 'proceedings being *ex parte*' the landlord is given an opportunity of appearing before the Collector who passes an order. The complaint was that anybody might appear before the Collector and say that he was the successor of a deceased tenure-holder, and that the Collector might hear him *ex parte*, and that the wrong person might be registered as the owner of the tenure. To obviate the difficulty the Hon'ble Member in charge of the Bill has added—"

The Hon'ble MR. DAS said:—

"May I call my friend to a point of order, Sir? Nobody raised the question of the merits."

The PRESIDENT:—

"The Hon'ble Member is quite in order."

The Hon'ble BABU JANAKI NATH BOSE continuing said:—

"Mr. Das' objection may be on general grounds, but I say he has no legs to stand on. The matter is not now to be heard *ex parte*, and the landlord will have the opportunity of showing the Collector that the person coming forward is not the successor of the person who is dead. I think the newly drafted clause 13A is certainly an improvement on the clause as framed by the Select Committee, and I hope that Hon'ble Members will accept it."

The Hon'ble RAI BAIKUNTHA NATH SEN BAHADUR said:—

"I should like to make a few suggestions. The original clauses 13, 14 and 15 have undergone material changes in Select Committee.

"With regard to the Bill as it stands after submission of the Report of the Select Committee, I know that amendments have been proposed by certain members, and I am told that the amendments now proposed by the Hon'ble Member in charge of the Bill are by way of concession. We, members who have not studied it from that point of view, are unable to discern at this moment where the differences lie and where the concessions have been made, and therefore, in justice to us, I beg to suggest that, as there is no chance of the Bill being gone through this day, the discussion of these clauses 13A, 13B and 13C, which are very important provisions in the Bill, may be taken up tomorrow in order that we may be in a position to judge where the differences lie and where the concessions have been made."

The Hon'ble MR. SAIYID WASI AHMAD said:—

"With your Honour's permission, I very strongly support the suggestion that has been made that the further consideration of these clauses may be postponed till tomorrow. I entirely agree with the Hon'ble Mr. Das when he says that as these new amendments were placed on the table this morning, we have had insufficient time to go through them. It is therefore only fair to ask your Honour to consider the desirability of postponing this matter, and I suggest that it should be taken up early tomorrow morning so as to enable us, though hurriedly, to go through the various amendments."

The PRESIDENT:—

"I hoped, when I allowed the proposed amended clauses to be put, that it would be left to the Members whose amendments were affected to decide the question, and that they would probably agree, (and I understood that most

of them had agreed), to discuss the clauses as now amended by the Hon'ble Mr. H. McPherson; but as there seems to me to be a good deal of opposition, and particularly on the part of the Hon'ble Mr. Das, (even though his one amendment has been accepted and embodied), I think it will be better to give the Council further time to consider all the fresh amendments on the separate paper, and I therefore propose to take them up tomorrow."

The discussion of amendment No 1A on the separate paper, and of the amendments* dependent thereon, was then postponed until the meeting of the 21st instant, and the Council proceeded to a consideration of amendment No. 63 in the original Amendment List.†

Clause 19.

63. The Hon'ble Raja Rajendra Narayan Bhanja Deo moved that the words "under one landlord" be inserted after the words "land situate in any village" in lines 3 and 4 of clause 19 (*1*).

He said :—

"In Orissa we find in many cases two or more landlords in one village. It is hardly fair to allow the tenant of one landlord to be a settled raiyat of another, although he may not have held land under the latter for more than a year. This restriction would practically prevent any landlord from giving land to a tenant of the village who is a raiyat under another landlord. This will come hard upon those who have very little land. A tenant who has a small plot under one landlord, which is insufficient for his support, may seek some other land from another landlord of the village who may be inclined to give a portion of land at his disposal to cultivate, but the very knowledge that thereby the tenant would acquire a right of occupancy would prevent the landlord from letting such tenant in."

The Hon'ble Mr. Kerr said :—

"The clause which the Hon'ble Member desires to amend is an exact reproduction of section 20 of the Bengal Tenancy Act,‡ and that section is one of the most important, if not the most important provision in the whole Act. It provides that every person who, for a period of 12 years, has continuously held land as a raiyat in any village shall be deemed, on the expiry of that period, to become a settled raiyat, and that a settled raiyat shall have rights of occupancy in all land held by him as a raiyat in the village. There is no section of the Bengal Tenancy Act‡ which was subjected to closer scrutiny and criticism than this one. There were many proposals as to the area within which the rights of a settled raiyat should be allowed to accrue, and finally, after an enormous amount of discussion with the details of which I need not worry the Council, it was decided that the village is the proper unit to adopt for this purpose. Under the proposal of the Hon'ble Member, which we are now considering, the estate instead of the village would be the unit for the accrual of occupancy-rights. I have already explained to the Council that an estate may consist of a few acres or it may consist of several hundred square miles, and is consequently a very undesirable unit for tenancy purposes. The Hon'ble Member's proposal would not affect the raiyats in the case of large estates such as that of which he himself is the proprietor, but it would very seriously affect the tenants in a common class of villages in Orissa, namely, those which are held by a large number of petty proprietors, each of whom or each family of whom holds a separate estate. The result would then be that a raiyat would have rights of occupancy in one field appertaining to a particular estate, and would have no such rights in the next field because it belonged to another

* See the second foot-note on page 87

† *i.e.*, Annexure A to the List of Business.

‡ *i.e.*, Act VIII of 1885.

[*Babu Bhupendra Nath Basu; Raja Rajendra Narayan Bhanja Deo; Mr. Saiyid Wasi Ahmad.*]

estate and because he had taken it up at a later date than his original holding. The Uriya raiyat is a person for whom I have a great respect and liking, but I do not think even his best friends could accuse him of being of a quick intelligence or likely to understand the complications to which the proposal of the Hon'ble Member would give rise. It would be very difficult indeed to get an Uriya raiyat to understand that in one field his rent could not be enhanced because he had an occupancy-right, while in the field next door his rent could be enhanced at the end of every year because he had no occupancy-rights; that in one field he was liable to summary ejectment, and in the next he could only be ejected by a decree of Court. I submit, Sir, that the only reasonable unit for the great majority of raiyats is the village in which they have their homes and in which the lands which they cultivate are situated. It would be quite impossible to allow an amendment which would have the result of giving the raiyat different kinds of rights in different fields within the same village, and I would submit that this amendment should be rejected."

The Hon'ble BABU BHUPENDRA NATH BASU said:—

"This clause is a reproduction of the Bengal Tenancy section and my friend, the Raja of Kanika, I think, makes a mistake when he says that the conditions of Orissa differ in this regard from the conditions in Bengal. In Bengal there are several landlords in one and the same village. This was one of the provisions as regards a point of law which was contested at the time the Bengal Tenancy Act* passed through the Council, and it was after a great deal of contention that it was resolved that the village should be taken as the unit, and that if the raiyat had land in one village under the provisions of the Bengal Tenancy Act,* he would also have the right of occupancy in another village. My friend forgets that this law is not only for the landlords but for the tenants, and that the rights of both sides have to be considered. Those rights were carefully considered at the time of the passing of the Bengal Tenancy Act.* I do not think any case has been made for any innovation in the provisions of the law, which, as it should, will not place the tenants in Orissa in a less advantageous position than their brethren in Bengal."

The Hon'ble RAJA RAJENDRA NARAYAN BHANJA DEO said:—

"The Hon'ble Babu Bhupendra Nath Basu says that the conditions are very similar to those of Bengal. I don't think so myself and the Hon'ble Mr. Kerr has already admitted that there are many small proprietors in Orissa.

"However, I do not like to press this matter and I propose to withdraw the amendment."

The motion was then, by leave of the President, withdrawn.

The following motions were, by leave of the President, withdrawn:—

64. The Hon'ble Raja Rajendra Narayan Bhanja Deo to move that the words "under such landlord" be inserted after the words "a settled raiyat of that village" at the end of clause 19 (*1*).

65. If motion No. 63 be carried, the Hon'ble Raja Rajendra Narayan Bhanja Deo to move that the words "under one landlord" be inserted after the words "land in a village" in line 2 of clause 19 (*2*).

66. The Hon'ble Mr. Saiyid Wasi Ahmad to move that the words "provided that he has not been out of possession for more than twelve months" be substituted for the words "notwithstanding his having been out of possession more than a year" in lines 2 and 3 of clause 19 (*6*).

67. The Hon'ble Raja Rajendra Narayan Bhanja Deo to move that clause 19 (*7*) be omitted.

---

* *i.e.*, Act VIII of 1885.

[*Raja Rajendra Narayan Bhanja Deo; Mr. M. S. Das.*]

Clause 21.

68. The Hon'ble Raja Rajendra Narayan Bhanja Deo moved that the words "except by purchase in execution of a decree in a suit for arrears of rent under the provisions of this Act" be inserted before the words "such person shall have no right" in line 5 of clause 21 (*1*).

He said :—

"Sir, formerly the law of merger was unknown in India. It was introduced into the Bengal Tenancy Act* for the first time. Before section 22 of the Bengal Tenancy Act* relating to the transfer of occupancy-right to a sole or a co-proprietor was introduced into Orissa, either a sole or a co-proprietor acquiring such rights by purchase either by voluntary or at court sale could hold the land by the same right as the original raiyat had. As there was nothing to prevent accrual of occupancy-rights, proprietors did acquire such rights. The provisions of section 22 of the Bengal Tenancy Act* were introduced into Orissa in 1891. It cannot be said that rights which had already accrued would terminate as an effect of the subsequent introduction of the section. The landlords of Orissa are mostly poor and they need special indulgence in the matter, especially when the area of their private lands is fixed and no further increase will be allowed. There might be objection to a landlord being allowed to buy up occupancy-rights, but when he is obliged to sell the holding of a defaulting tenant and, for want of a bidder, is obliged to purchase it himself there is no reason why, having paid the full value, he should be treated differently from any other purchaser. Generally the worst lands are sold in execution sale in consequence of the inability of the raiyat to pay the rents. If the landlord is allowed to retain possession of such land separately, he would effect improvements in which Government will participate at the next settlement of land revenue."

The Hon'ble Mr. Das said :—

"Of course we have always to face the rock of the Bengal Tenancy Act,* which has sheltered the Settlement Officer. But then there are peculiar circumstances. First of all the circumstance that up to the time that the Bengal Tenancy Act* was introduced for the purpose of revenue settlement, the zamindars did buy rights of occupancy wholesale and did enjoy them. Then we must take into account the fact that the zamindars of Orissa are not the zamindars of Bengal. The Hon'ble Member in charge of the Bill has mentioned that there are zamindars who are the masters and proprietors of a few bighas of land. This is perhaps worse than misfortune itself. Then we must take into consideration that Orissa is a place which is often exposed to floods. The floods come in and deposit sands on lands and very often the *nij jote* lands of the zamindar are covered with sand. I brought to the notice of the Hon'ble Member in charge of the Bill the fact that I know of a certain zamindar, who is said to own 3,000 acres of *nij-jote* land, out of which 1,000 acres are unfit for cultivation. Now the consequence is that while nature has been trying and persisting in her course to deprive the zamindar of his private lands, the Bill, as it stands before us, defines the limits of these private lands. The question is, is not the zamindar entitled to any kind treatment different from what is accorded to the zamindar in Bengal? The Hon'ble Member in charge of the Bill, when introducing the Bill, said for these reasons they have been deemed entitled to some considerate treatment. I suggested to the Hon'ble Member in charge to allow the zamindar, in cases where his private land has become covered with sand, to buy up land in execution of a decree against the tenant, and actually to take, as his private land, as much of the tenant's land as he (the landlord) had lost out of his original private land, so that actually the zamindar might feel that Government had given him so much private land. But the Hon'ble Member, with the strength, or I may say the tenacity,—whichever it is,—of people living in the north of England, would not give in.

* i.e., Act VIII of 1885.

Then, Sir, when a man finds nobody else will buy the land, he has to buy the holding himself. He has no motive to do so if anybody else is willing to buy it. This shows the state of things—that there is nobody to buy the holding;—consequently there is no competition for the land: in that case he keeps it. Some time after there is competition. At a bad time he has to cultivate the land himself; he employs labour, and, when a good time comes in, the raiyat comes in and says, 'Well, will you allow me to cultivate your land?' and, as soon as he comes in, he acquires the right of occupancy. Of course, where there is keen competition, I should be the last person to raise the question. Certainly, if there is great competition, the right should be provided for; and I have always stood up for the raiyats, although to-day, by the kind permission of the Secretary, Mr Watson, I am sitting here with a different and higher class of* gentry."

The Hon'ble RAI BAIKUNTHA NATH SEN BAHADUR said:—

"Clause 21 embodies the law as it stands in Bengal at the present moment under the Bengal Tenancy Act.† It is based upon the doctrine of merger. The principle has been discussed, since the Bengal Tenancy Act † came into operation, in many cases. I have no personal knowledge of the position of the Orissa landlords, nor of the position of the tenants, but the question is whether the Orissa landlords or the Orissa tenants are entitled to a differential consideration. There are only two aspects to be considered, viz., whether such union of interests is rare or frequent. If it is rare, then I should say that the provision is based upon the sound principle of merger. The difficulty would not be appreciably felt by those concerned. If such unions are frequent, protection would have to be given to the tenants—the actual agriculturists. That is the view I take of the principle embodied in this clause, and I regret that I cannot support my friend in his amendment."

The Hon'ble MR. KERR said:—

"Sir, the clause which we are now considering is a somewhat complicated one, but its object is clear enough, and it is not necessary to go into the law of merger in order to understand it. It is to discourage the acquisition of occupancy-rights by landlords. This policy of Government has always been recognised. It was definitely stated in 1885. It was re-stated in 1907 when the identical section from which this clause is borrowed was amended, and I am very glad to have an opportunity of re-stating it to day. It has also been recognised in decisions of the High Court. If a landlord acquires an occupancy-holding by purchase, succession or otherwise, he can cultivate the land himself as long as he likes, and nobody will interfere with him; but the land remains part of the raiyati stock of the country, and if the landlord re-lets the land to another person and if that person is a settled raiyat of the village, he at once acquires occupancy rights in it under the provisions of clause 19 of this Bill. The Hon'ble Member's amendment would enable the landlords to bar the accrual of occupancy-rights in any land which they have acquired at sales for arrears of rent and subsequently re-let, and I see from paragraph 127 of this list of amendments that the Hon'ble Member actually wishes to introduce a definite provision to this effect in clause 49 of the Bill relating to *nij-jote*. Such a provision would in effect be an extension of *nij-jote* privileges for which there is no justification whatever. The Hon'ble Mr. Das asks for kind treatment for the zamindars of Orissa. It will be apparent when we come to consider the *nij-jote* provisions of the Bill that the zamindar has been given one lakh of acres of *nij-chas* land out of the raiyati stock of the country as *nij-jote*, and there is no reason to add to it in the manner now proposed. As I have explained, such an arrangement would be contrary to the settled policy of tenancy law in this province, and I must therefore ask the Council to reject the amendment."

* The Hon'ble Member was not in his usual place, having asked for a seat next to the Hon'ble the Raja of Kanika, who was accommodated alongside other representatives of the landed interest.

† i.e., Act VIII of 1885.

[*Raja Rajendra Narayan Bhanja Deo; Babu Hrishikesh Laha.*]

The Hon'ble RAJA RAJENDRA NARAYAN BHANJA DEO said :—

"Of course I know the law of merger is against this proposal, but I think that in the North-Western Provinces, the proprietors are allowed to retain their *sir* lands, after their zamindaris are sold, at some concession rate, and the zamindars of Orissa are not much better off than their brethren of the North-Western Provinces. Both being temporarily settled areas, I think Government should make some similar concession in the case of Orissa landlords."

The motion was then put and lost.

The following motions were, by leave of the President, withdrawn :—

69. If motion No. 68 be not carried, the Hon'ble Raja Rajendra Narayan Bhanja Deo to move that the word "voluntary" be inserted before the word "transfer" in line 4 of clause 21(*1*).

70. The Hon'ble Raja Rajendra Narayan Bhanja Deo to move that the words "or otherwise" in line 4 of clause 21 (*1*) be omitted.

71. The Hon'ble Raja Rajendra Narayan Bhanja Deo to move that the words "except in execution of a decree in a suit for arrears of rent under the provisions of this Act" be inserted after the word "transferred" in line 1 of clause 21 (*2a*).

72. If motion No. 71 be not carried, the Hon'ble Raja Rajendra Narayan Bhanja Deo to move that the word "voluntarily" be inserted before the words "transferred to a person jointly interested" in lines 1 and 2 of clause 21 (*2a*).

73. The Hon'ble Babu Hrishikesh Laha moved that the words "a sum equivalent to the rent which was formerly paid by the occupancy-raiyat" be substituted for the words "a fair and equitable sum" in lines 5 and 6 of clause 21 (*2a*).

He said :—

"The co-sharers of a purchaser-proprietor or tenure-holder or the co-sharer purchaser-proprietor or tenure holder himself, will, on every occasion, have recourse to the Court for the settlement of a fair and equitable rent for the holding. This will create friction among these persons, and at the same time entail heavy expenses upon them. It is all very well to endeavour to establish an ideal normal standard of payment for the use and occupation of the land, but the language of the sub-clause is vague and leaves the amount undetermined, and so the remedy becomes worse than the disease. There would be no friction or discord if the amount of rent previously paid by the occupancy-raiyat be taken as the proper amount to be paid by the purchaser, co-sharer landlord or tenure holder for the use and occupation of the land. If any of the landlords are dissatisfied with the amount of rent formerly paid by the occupancy-raiyat and which the purchaser-proprietor or tenure-holder will be bound to pay, as proposed in my amendment, then he may resort to Court. But if sub-clause (*2b*) be allowed to stand as it is, then, in every case of transfer, the purchaser landlord or tenure-holder or his co-sharers will be compelled to have recourse to the Court to have a fair and equitable sum determined by it. It will prove a fruitful source of contention among them. My amendment would enable the landlord or the tenure-holders themselves, without any trouble, to determine what amount would be payable for the use and occupation of the land. Then again, if the purchaser-proprietor or tenure-holder is to have no right to hold the land as a raiyat, he will be compelled to let it out at least at a rent which had been formerly paid by the occupancy-raiyat without any profit on his outlay, and no person would take the holding at a rent higher than what had been paid by the former raiyat, and if he does not get a person to pay that rent, the land will lie fallow. If the fair and equitable sum, which is to be fixed by the Court, be

less than what was formerly paid, then the co-sharer landlords or tenure-holders would suffer. Looking at the matter from every point of view, the amendment proposed by me will help to remove the difficulty anticipated."

The Hon'ble MR. KERR said:—

"The provision of the clause which the Hon'ble Member seeks to amend is that which deals with the rent to be paid by the purchaser of an occupancy-holding to his co-sharer so long as he holds the holding himself and does not let it out to a raiyat. In the clause, as drafted by the Select Committee, it is provided that he should pay to his co-sharers a fair and equitable sum for the use and occupation of the land, and moreover that, in determining from time to time what is a fair and equitable share, regard shall be had to the rent payable by the occupancy-raiyat at the time of the transfer and to the principles of this Bill regulating the enhancement or reduction of the rents of occupancy-raiyats. Under the Hon'ble Member's amendment, however, the co-sharer landlord who acquired occupancy-rights would go on holding the land for ever at the same rent which was in force at the time of the purchase. This state of things would obviously be unfair to the co-sharing landlords. It would mean that the purchasing landlord would acquire practically a *mukarrari* right in the land, and his fellow proprietors would never be able to get an increased rent for the land due to the development of the estate, rise in prices, improvements effected by them or any of the other grounds which are recognised as justifying an enhancement of the rent. The Hon'ble Member says that it would cause contention to grant enhancements as laid down in the Bill, but all that the clause provides for is that if the co-sharers cannot agree they can ask the court to settle a fair and equitable rent. I can see no reason whatever for granting this special privilege to a purchasing co-sharer landlord or for imposing these special disabilities on his co-sharers. I trust that the amendment will be rejected."

The Hon'ble RAI BAIKUNTHA NATH SEN BAHADUR said:—

"I beg to support the amendment. The apprehensions entertained by the Hon'ble Mr Kerr that there would be prospective loss to co-sharers on account of their not being able to enhance the rent and as to the retention of the right of occupancy of the holding of the co-sharer as a *mukarrari* holding are not well founded Now, in the first place, if there be several share-holders, in that case no enhancement under the law can be allowed unless that co-sharer also joins in suing for the enhancement. Practically, in the event of there being several co-sharers in an estate, the right of occupancy would be perfectly safe against enhancement, and, with regard to the prospective loss, the chances of an enhancement would be very rare, but disputes amongst sharers would always be certain. When one sharer makes a purchase and the other sharers do not agree with him, he might be compelled by the other sharers to let out the land to the tenants. So, considering the evils on both sides, perhaps there would be less evil in accepting the previous rent as a fair standard rent, instead of leaving the matter to be disputed on every occasion, and having to consider the rent at the time of the transfer. And, by applying the principles of this Bill regulating the rent, it would be the lesser evil to accept the amendment and to fix the rent which was payable at the time of transfer as fair and equitable."

The Hon'ble MR. H. MCPHERSON said:—

"Sir, may I say a few words supplementary to the remarks of my hon'ble friend Mr. Kerr? This amendment seems to me to be one which chiefly concerns proprietors. What I desire to point out is that if the amendment of the Hon'ble Mover be accepted, there is considerable risk of loss to the co-sharer landlord, who is not the purchaser. Take the case of an estate held half and half by two people, one co-sharer being a wealthy man, and the other a poor

[*Babu Hrishikesh Laha; Mr. H. McPherson; Rai Sheo Shankar Sahay Bahadur.*]

man. The wealthy man buys up practically the whole of the raiyati holdings of the estate. If this amendment be approved, the result will be that the poor co-sharer who has an equal interest in the estate has the value of his half share very substantially diminished. He will never be able at any time to get any enhanced rent in respect of the occupancy-holdings purchased by his wealthier co-sharer. It seems to me that the question is one of very material importance to landlords generally. The result may be that one of the co-sharers of an estate may be in a position to hold the whole estate on a *mukarrari* rental. This is surely unfair to the other co-sharers. In regard to the working of the clauses as they stand, no difficulty or hardship need be apprehended. The clause says that a fair and equitable sum shall be paid. If reference be made to the clauses of the Bill dealing with the enhancement of occupancy rents, it will be seen that it is one of their first principles that the existing rent is presumed to be fair and equitable till the contrary is shown. Unless, then, there is any ground for enhancement, the co-sharer purchaser will go on holding the land on the same rent as paid by the former raiyat. If, on the other hand, there be reasonable ground for enhancement, as, for example, a rise in prices, there is no reason at all why the non-purchaser co-sharer should not benefit from the holding to that extent. I think if the case be looked at from this point of view, the Hon'ble Member will himself see that he is doing serious damage to the interests of co-sharer landlords who are not purchasers."

The Hon'ble BABU HRISHIKESH LAHA :—

"Sir, I have not understood what has been said by the Hon'ble Member in charge of the Bill. Supposing a co-sharer landlord bought an occupancy-holding and had to pay a rent of fifteen rupees, and supposing he is a one third sharer of the estate, he will have to pay to the other co-sharers five rupees each; but supposing he does not pay that amount to the other co-sharers, what will be his position? What will he have to pay to the other co-sharers? That is all I wish to know."

The Hon'ble MR. H. MCPHERSON said :—

"I do not quite follow the Hon'ble Member's question, but I will explain the working of the clause from a concrete example. If an 8-anna co-sharer landlord purchases an occupancy-holding of which the present rent is Rs. 15, then the amount annually payable to the other 8-anna co-sharer will be Rs. 7-8. But let us suppose that an interval of 30 years supervenes during which there has been a considerable rise in prices. The non-purchaser co-sharer may go into Court and ask that the amount payable be increased. The Court may find that the total rent of the holding should now be considered to be Rs. 20, and may decide that Rs. 10, one-half of Rs. 20, shall be the amount annually payable by the purchaser-landlord."

The motion was then put and lost.

Motion No. 73 being lost, the following motion was, by leave of the President, withdrawn :—

74. If motion No. 73 be carried, the Hon'ble Babu Hrishikesh Laha to move that clause 21 (*2b*) be omitted.

Clause 24.

75. The Hon'ble Rai Sheo Shankar Sahay Bahadur moved that the word "or" be omitted at the end of clause 24 (*a*) and inserted at the end of clause 24 (*b*), and that after clause 24 (*b*) the following be added as sub-clause (*c*), namely :—

"(*c*) that he has disclaimed the title of his landlord."

He said :—

"If a tenant denies the title of his landlord, the landlord is entitled to treat the tenancy as determined by reason of disclaimer of his title.

[*Mr. Kerr.*]

As pointed out by the Hon'ble Judges of the Bombay High Court in I. L. R., 20 Bom., p. 354, and quoted with approval in 9 C. W. Notes, p. 928 (at p. 933), this is a right that the law implies in all cases from the relationship of landlord and tenant. It has been held that this is the law in force till now in districts in which Bom. Act VIII of 1869* prevails (*see* Rampini's edition, Bengal Tenancy Act,† p. 106). Therefore the law of forfeiture, by denial of the landlords' title, though it does not apply with full force in the area governed by the Bengal Tenancy Act,† applies to the area for which we are legislating now, and there is no reason why it should be changed or altered by this legislation. This law is still in force there, and it will be unjust to modify it. This is a matter in which no one has or ought to have any sympathy for the defaulting tenant. He impeaches the title of the very person from whom he has derived his own.

"I find in the Statement of Objects and Reasons, with reference to this clause, the following:—

"'The question whether the denial by a tenant of his landlord's title should be a ground for forfeiture of his tenancy will be specially considered in Select Committee.'

"I do not find from the Report of the Select Committee if this matter was considered by them and with what result, or what are the grounds of their decision.

"My amendment simply provides that the law of forfeiture by disclaimer of the landlords' title shall continue to be in force as heretofore."

The Hon'ble MR. KERR said:—

"The effect of the Hon'ble Member's amendment would be to make denial of a landlord's title a ground for ejectment in the case of an occupancy-raiyat. I can see no justification for such a very severe punishment being inflicted. The Hon'ble Member says that this is the law at present in force in Orissa. This is the first time I have heard a statement to that effect, and I very much doubt whether the Hon'ble Member has correctly apprehended the existing law in Orissa. But if he is correct, I have no hesitation whatever in saying that the law ought to be altered. I must again remind the Council of the conditions prevailing in Orissa and in many other parts of the country owing to the subdivision of proprietary rights. The minute subdivisions which occur often make it extremely difficult to say what particular individual has the proprietary right in any particular bit of land. Cases are brought about this plot in the Collector's Land Registration Court. The parties go on appeal to the Commissioner and the Board, and then they often come up again in the Civil Courts with appeals to the High Court and sometimes to the Privy Council. The result is that the question of the proprietorship of a particular bit of land is often a matter of doubt for several years. During that period great pressure is brought to bear on the raiyats by the contending parties that one of those parties should be recognised as the landlord. It may, of course, be said that the raiyat ought to say, 'I do not know which of you is my landlord. I will deposit my rent in Court and leave the Courts to decide to whom it is due,' but unfortunately very few raiyats in this country have sufficient intelligence or independence to take up a position of this kind. Usually the raiyat is forced by pressure in his village and often by physical force to pay his rent to one or other of the contending parties. The result is that he must deny that any of the other contending parties is his landlord, because a raiyat is too poor to be able to enjoy the luxury of paying his rent twice over. Now, if it turned out in the end after many years of litigation that the raiyat had paid his rent to the wrong man he would be liable, under the Hon'ble Member's amendment, to ejectment for disclaiming his landlord's title. I submit that this penalty for the raiyat's lack of judgment or foresight in foreseeing the end of litigation, with which he is not personally concerned in any way, is

* *i. e.*, The Landlord and Tenant Procedure Act, 1869.
† *i. e.*, Act VIII of 1885

[*Raja Rajendra Narayan Bhanja Deo.*]

much too severe. To tell a raiyat that he is to lose his holding is very much the same as telling him that he must be hanged by the neck until he is dead. Clause 250 of this Bill, which is a copy of section 186A of the Bengal Tenancy Act,* provides that when a tenant has renounced his character as tenant of the landlord by setting up without reasonable or probable cause title in a third person or himself, the Court may pass a decree in favour of the landlord for such amount of damages, not exceeding ten times the amount of the rent payable by the tenant, as it may consider to be just. I submit that this is a sufficiently severe penalty for what is, after all, in most cases, merely a lack of judgment on the part of the raiyat and perhaps not even that, and that this Council would not be justified in inflicting the very severe penalty proposed by the Hon'ble Member."

The motion was then put and lost.

76. The Hon'ble Raja Rajendra Narayan Bhanja Deo moved that the word "or" be omitted at the end of clause 24 (*a*) and inserted at the end of clause 24 (*b*), and that after clause 24 (*b*) the following be added as sub-clause (*c*), namely :—

"(*c*) that he has failed to pay rent either wholly or partly for three successive years."

He said:—

"Under section 78 of Act X of 1859† a landlord could sue for ejectment and cancelment of lease and claim arrears of rent in one suit. The result of this wholesome provision was that the tenants, whenever they were sued for arrears and ejectment, paid up the arrears to avoid the risk of ejectment without waiting for process of execution. The extension of the provision of section 65 of the Bengal Tenancy Act* in 1891 practically repealed this provision of Act X,† although that Act remained in force by virtue of section 2 of the Bengal Tenancy Act.* It is one of the grievances of the landlords that the Bengal Tenancy Act* provisions have deprived them of advantages which the old law had conferred upon them. The result is that the landlords become burdened with heavy lists of arrears. The cost of collection is estimated at 16 per cent. and of litigation at 2 per cent. by Mr. Maddox, who estimates that, in the vast majority of cases, the net collections should not be less than 80 per cent. of the mufassil demand and that 70 per cent., at the minimum, comes to the proprietor's pocket (*vide* Orissa Settlement Report, Volume I, page 245). The margin of profit left to proprietors, after paying the Government revenue, varies from 40 to 0 per cent. So it can well be imagined what comes to the proprietor's income after all these expenses are deducted. Hence it is that a large number of estates fall into arrears every *kist* and are brought to sale. It is then that the landlords are at their wit's end to pay their dues. They have to borrow at large rates of interest and have to pay heavy penalties to save their estates from being sold up; while the sunset law hangs like Damocles' sword over their heads, and no measures have been provided in the Bill to afford facilities for prompt collection of their rents. The remedy provided is cumbrous, and they have to wait long till the arrears are realized through the Court. Even then, all the money paid is not realized. There are several items of expenditure, incidental to litigation, which cannot be recovered from the tenants. Under such circumstances it would only be fair that the failure to pay rent should be made a ground of ejectment as was the case under the old law. There is no danger of the tenants being subjected to ejectment. Even when the old law was in force there were hardly any ejectments, if any at all, on this ground. Besides, under the present law even a non-occupancy-raiyat cannot be summarily ejected, although failure to pay arrears is one of the grounds of ejectment in his case. He cannot be ejected if he pays the decretal amount within 15 days. I have proposed, in the case

* *i.e.*, Act VIII of 1885.
† *i.e.*, the Bengal Rent Act, 1859.

of an occupancy-raiyat, that he shall not be ejected, if he pays the decretal amount within thirty days While the Government is anxious to protect the rights of the tenants, it is only fair to ask in return that the landlord's interest, which is closely bound up with the interest of Government in the prompt realization of its demands, should be safeguarded."

The Hon'ble MR. DAS said:—

"We have been told that the Bengal Tenancy Act* has been here for so many years and that it has stood the test for so many years. It sounds like this, 'I say that section 78 of Act 10 of 1859† has worked satisfactorily for so many years. Why kill it as a reward for a thing that has worked satisfactorily and replace it by another because it is not wanted? We must do away with the old things and have new things.' Then the very fact that this proposal comes from the zamindars shows that they are not anxious to get rid of the raiyat. All that they want is an additional lever, a further screw, to stir up a raiyat to pay his debts. The Privy Council, in one of their judgments, said that the trouble begins with the decree-holder when he gets his decree. It is in the execution of the decree that the judgment-debtor always has ample opportunities of evading the pursuit of the decree-holder. The work of execution in the matter of decrees is not exactly so easy as the work of an executioner. Secondly, Sir, all that is needed is, that the tenant should understand that he can be evicted unless he pays up his dues, and that he must raise the necessary money. The question really assumes this form. Money has to be got: the zamindar is in an impoverished condition; and we know from statistics that he has to incur debts. The raiyat owes the zamindar money, and the question is whether the zamindar should incur debts or the raiyat should incur debts. If the raiyat finds he is in danger of eviction he raises the money and pays up. This is no hardship to the raiyat; in practice the system has worked satisfactorily; while, on the contrary, the Government will not give the zamindar decree-holder any right over the land which he buys in execution of his rent decrees, so he is naturally anxious that these holdings should not pass into other hands, and the very fact that the zamindar does not want this to happen, but wants to secure another remedy in the shape of ejectment, shows that he finds difficulty in getting satisfactory tenants. Therefore, while he is anxious to have the raiyat, he is also anxious to have what has hitherto proved a very successful warning or threat. While it is necessary that the interests of the raiyat should be protected, it is also necessary that facilities should be given to the zamindar to collect his dues. After all, the zamindar is certainly the best judge; he knows the difficulties much better than a Government official.

"On these grounds I think that this ought to be allowed."

The Hon'ble BABU BHUPENDRA NATH BASU said:—

"This proposal is for taking away from the occupancy-tenant a right which he possesses. If my friend's amendment is carried, what will be the effect? The effect will be that the occupancy-raiyat may be ejected when he has failed to pay rent either wholly or partly for three successive years. The zamindar has got his damages, provisionally 25 per cent He has got the right to sell up the holding in execution of his decree. He has got certain specific provisions under which the occupancy-tenant may be ejected. If he also gets this, then I say that the occupancy-right becomes a mere name and practically no protection will be left to the tenant. So far as this right is concerned, we have not had much difficulty in dealing with it in Bengal, and I do not suppose there will be much difficulty in Orissa. The zamindar has got powers enough to enforce the payment of his rent

"I allow that the sunset law is a hard law so far as the zamindar is concerned. But because he labours under one hardship, why should he try and

* *i.e.*, Act VIII of 1885.
† *i.e.*, the Bengal Rent Act, 1859.

[*Mr. Kerr; Mr. H. McPherson; Raja Rajendra Narayan Bhanja Deo.*]

impose a further hardship on his tenant and reduce his occupancy-right to a nullity by the introduction of a law which will be detrimental to the interests of the raiyat?"

The Hon'ble MR. KERR said:—

"The proposal of the Hon'ble Member is to make failure to pay rent either wholly or partly for three successive years a ground for the ejectment of an occupancy right. This introduces an entirely new principle in the Tenancy law of the Province, and I submit that no justification has been made out for it. The Hon'ble Mr. Das, so far as I can understand him, wants us to give the landlord the power to use what he calls a threat of ejectment, but we all know that such threats have a way of passing into action. This Bill, like the Bengal Tenancy Act,* provides ample means for a landlord to recover arrears of rent; and if the raiyat, on being sued, does not pay up the amount of the decree given against him, his holding can be sold up in execution of that decree. I submit that this provision is ample and that there are no grounds for allowing a landlord to eject his raiyat summarily, because he has not paid his rent for three years. Such cases, in my experience, are very rare and nearly always due to some special cause. I have known cases where a landlord declines to accept what the raiyat tenders because he considers it is not enough and because it is not convenient for him at once to put the raiyat into Court. It would be very unfair in such a case to allow the landlord summarily to eject the raiyat at the end of three years. The landlord's duty in the case of recusant tenants who will not pay the rent demanded is to bring the matter before the proper Courts, and he has no right to bring pressure to bear on the tenant to pay up his demands by evicting him without first having recourse to the Courts for recovery of his rents. I would, therefore, ask the Council to reject this amendment."

The Hon'ble MR. H. MCPHERSON said:—

"The Hon'ble Mover tries to justify his proposal on the ground that the temporarily-settled proprietor in Orissa is in a worse position than the temporarily-settled proprietor of Bengal, that he has a smaller margin of profit and, therefore, requires more assistance in collecting rents. I may remind Hon'ble Members that we have provided additional assistance to the temporarily-settled proprietors. The whole of the distraint chapter is in their favour. We have given the Orissa zamindar the right of private distraint which is not given to the zamindars of Bengal. This point appears to have been overlooked. I would also like to point out that, so far as the proposal is based on the provisions of Act X of 1859,† the raiyat has had the benefit of the existing law on the subject for twenty years, and that even section 78 of Act X of 1859† gave the raiyat, who is being sued for ejectment for arrears of rent, the right of paying up the arrears within 15 days of the decree and thus saving himself from ejectment. If the Hon'ble Mover wanted to restore the provisions of Act X he ought to have added this proviso. Why has he not done so?"

The Hon'ble RAJA RAJENDRA NARAYAN BHANJA DEO said:—

"Sir, it is admitted that when Act X of 1859† was in force not much hardship was caused by this clause, and the Bengal Tenancy Act,* as I have already stated, was enacted with a view that it should apply to Bengal. But, Sir, in a temporarily-settled area, at all events, some other facilities besides that which the Hon'ble Mr. H. McPherson stated ought to be given. This will only be a threat for the tenant to pay up, and I have made another amendment, so that, if he pays within 30 days, he shall not be ejected. These are my reasons."

* *i.e.*, Act VIII of 1885.
† *i.e.*, the Bengal Rent Act, 1859.

[*The President.*]

A division was then taken, with the following result :—

Ayes 7.	*Noes* 33.
The Hon'ble Maharaj Kumar Gopal Saran Narayan Singh.	The Hon'ble Mr Slacke
,, Babu Kirtanand Sinha.	,, Raja Kisori Lal Goswami.
,, Raja Rajendra Narayan Bhanja Deo.	,, Mr. Greer.
,, Mr. Apcar.	,, Mr. D J. Macpherson
,, Mr Sayyid Wasi Ahmad.	,, Mr. E. W Collin.
,, Maulvi Sayyid Muhammad Fakhr-ud-din.	,, Mr Stevenson-Moore
,, Mr. Das.	,, Mr. Chapman.
	,, Mr. Finnimore.
	,, Mr. Kerr
	,, Mr. Stephenson.
	,, Mr. Maddox.
	,, Mr. Kuchler.
	,, Mr. Morshead.
	,, Sir Frederick Loch Halliday, Kt.
	,, Mr Cumming.
	,, Mr. Bompas.
	,, Mr Oldham.
	,, Mr. McPherson.
	,, Babu Janaki Nath Bose
	,, Sir Frederick George Dumayne, Kt.
	,, Kumar Sheo Nandan Prasad Singh.
	,, Babu Bhupendra Nath Basu
	,, Rai Sita Nath Ray Bahadur.
	,, Lieut.-Col. Grant-Gordon
	,, Babu Deba Prasad Sarbadhikari.
	,, Mr. Norman McLeod
	,, Mr Stewart.
	,, Mr. Golam Hosain Casim Arifi.
	,, Babu Hrishikesh Laha
	,, Maulvi Sayyid Zahiruddin.
	,, Mr. Reid.
	,, Rai Baikuntha Nath Sen Bahadur.
	,, Khan Bahadur Maulvi Sarfaraz Husain Khan.

The following Members were absent :—

The Hon'ble Mr Mitra.
,, Maharaja Manindra Chandra Nandi.
,, Dr. Abdullah-al Mamun Suhrawardy.
,, Mr Datt.
,, Babu Mahendra Nath Ray.
,, ,, Braj Kishor Prasad.
,, Mr. Dip Narayan Singh.
,, Babu Bal Krishna Sahay.

The Hon'ble Maharaja Bahadur Sir Prodyot Kumar Tagore, Kt., the Hon'ble Maharajadhiraja Bahadur of Burdwan and the Hon'ble Rai Sheo Shankar Sahay Bahadur abstained from voting.

The result of the division was *ayes* 7, *noes* 33, and the motion was therefore lost.

The PRESIDENT said:—

"I think we had better leave out items 77 to 101 on the Amendment List, relating to clause 25A, because they, too, are subject to the Hon'ble Mr. H. McPherson's proposed alterations,* and we can deal with them to-morrow.

We will now proceed with clause 34, amendment No. 102."

* See the second foot-note on page 87, and the President's ruling on page 94.

[*Raja Rajendra Narayan Bhanja Deo; Babu Bhupendra Nath Basu; Mr. Kerr; the President.*]

Clause 34.

102. The Hon'ble Raja Rajendra Narayan Bhanja Deo moved that the words "provided that such application is made after two years from the date of the decree" be added at the end of clause 34 (2).

He said:—

"A fair trial should be given to the improvements effected. In the absence of any provision limiting the time for making any application under this sub-clause, a bad tenant may turn up shortly after the order or decree and apply for its reconsideration."

The Hon'ble BABU BHUPENDRA NATH BASU said:—

"I do not understand the meaning of this 'provided that such application is made after two years from the date of the decree.' Does the Hon'ble mover mean that this application can be made any time after two years, and that it is not to be made within two years?"

The Hon'ble MR. KERR said:—

"The clause which we are now considering deals with the enhancement of rents of occupancy raiyats on the ground of a landlord's improvement. After dealing with the circumstances in which the Court can grant an enhancement, there is a further provision that a decree for enhancement will be liable to reconsideration in the event of the improvement not producing or ceasing to produce the estimated effect. The Hon'ble Member's amendment is designed to secure that an application for a revision of rent enhanced on the ground of landlord's improvement must be brought within two years of the date of the decree. It is hardly necessary for me to point out how unfairly this proposal would operate in practice. A landlord makes an embankment or digs an irrigation channel; he then obtains an enhancement of rent to which his enterprise justly entitles him; but if he or his successor neglects to maintain the embankment or the irrigation channel, it is surely only fair that the raiyat should then be entitled to apply for a reduction of his rent. There is no reason why an enhancement which was granted on account of a specific improvement should continue to be paid after that improvement has been allowed to become useless, and it is only on condition of maintaining the improvement that the landlord is justified in levying the enhanced rent from the raiyat. Considerations of time have nothing whatever to do with the matter. Whether the improvement fails two years or ten years after it has been made, the raiyat is entitled to a reduction."

The PRESIDENT said:—

"I think the intention of the amendment is misapprehended. The amendment appears to indicate that the application must be made more than two years after."

The Hon'ble MR. KERR:—

"The Hon'ble Mover's next amendment provides for an application within three years."

The PRESIDENT:—

"That is not now under consideration."

The Hon'ble MR. KERR:—

"I took both amendments to mean the same thing."

[*The President; Mr. Kerr; Mr. M. S. Das; Mr. H. McPherson.*]

The PRESIDENT:—

"One amendment provides for an application 'after two years,' and the other 'within three years.' I understand the point of the amendment is that it cannot be made until *after* two years."

The Hon'ble MR. KERR:—

"That means that during the first two years he must go on paying the enhanced rent. The Court gives a decree for enhanced rent when the landlord makes an improvement. The landlord takes no steps to maintain the improvement, but allows it to fall into disrepair; it is no good to anybody, and yet the mover wants that for two years, in any case, the raiyat must go on paying rent and after that go to the Court. In the meantime he has been paying the enhanced rent for which he has received nothing in return. I see no logic or justice in this suggestion."

The Hon'ble MR. DAS said:—

"There has been some misconception about this. The object of the motion is that some time should be given to judge of the effects or the benefits of the improvement. Of course the Hon'ble Member, Mr. Kerr, says that if a landlord does not maintain or keep up the improvement, it is not at all fair that he should have the enhanced rate of rent. That is simply justice. But then the question is this: There may be improvements of such a nature that the benefits of the improvement would not be perceivable until some time after. Then the question is whether, as soon as improvements are introduced and the benefits are not apparent on the surface, so far as the cultivator is concerned—a man should not be allowed to come in at once and say, 'You may have made that embankment but I have not received the benefit of it.' For instance, there is an embankment saving him from inundation, but there have been no floods. The man may turn round and say, 'I did not require the embankment this year, and why should I pay for it?' The motion is that sufficient opportunity should be given for sufficient time to elapse.

"Then we must take into consideration the question of a decree under this clause. The landlord goes to the Court and gets a decree for enhancement, and the Court, on the materials before it, decrees an enhancement. This clause however provides that the tenant can go and ask for a review of that decree. Well, we have first of all to show on what materials the Court came to the decision that the tenant ought to pay the enhanced rate. Then we find that the tenant can come round after 15 days or a month and ask for a review. There is nothing to prevent him from doing that on the wording as it stands in this clause. All that the motion means is that, the decree having been once passed to that effect, the tenant should not be allowed to come and petition for a review or a reconsideration of the decree till two years have elapsed from the date of the enhancement decree. It only means that, once the Court has given a decree, there should be no provision leaving the period of selection to the choice of the tenant at any time to move the Court to set aside the decree."

The Hon'ble MR. H. McPHERSON said:—

"May I put a concrete case? The Hon'ble Mr. Das has spoken of the case of an embankment."

The Hon'ble MR. DAS said:—

"I did not confine my remarks only to a case of embankment."

The Hon'ble MR. H. McPHERSON said:—

"Since the Hon'ble Member has mentioned the case of an embankment, let us take that case. An embankment has been put up by a landlord to protect the land of his tenant and he gets a decree in Court for enhancement of rent on account of the embankment. Now let us suppose that, one month

[*Raja Rajendra Narayan Bhanja Deo; Babu Hrishikesh Laha; Babu Bhupendra Nath Basu.*]

after the decree, a flood comes down and sweeps away the embankment. The zamindar takes no action for one year or eighteen months to restore the embankment or secure the land. Is the tenant to be debarred for two whole years from going to the Court and saying, 'This embankment has been swept away and I am getting no advantage from it. Why should I pay the enhanced rent?.' The question ought to be considered with reference to concrete cases and not on purely theoretical grounds."

The motion was then put and lost.

The following motion was, by leave of the President, withdrawn:—

103. If motion No. 102 be not carried, the Hon'ble Raja Rajendra Narayan Bhanja Deo to move that the words "within three years from the date of the decree" be added at the end of clause 34 (2).

Clause 41.

104. The Hon'ble Babu Hrishikesh Laha moved that clause 41 be omitted.

He said:—

"This commutation clause is altogether unsuited to the conditions of Orissa. The combination of various causes and circumstances, existing from a very remote period, has served to bring about the system of paying rent in kind which has contributed largely to the convenience and comfort both of the landlord and the tenant. To disturb such a system by legislation would be an arbitrary interference with economic laws, and the effect would be anything but satisfactory. The main plea advanced is that the raiyat is down-trodden, and that facility should be afforded to him to obtain a comfortable living. He does not feel any hardship in paying the produce-rent; he pays that rent in accordance with the voluntary agreement entered into either by himself or his ancestors, keeping in view the productive powers of the land, and his convenience and the profit that will accrue to him, and keeping also in view the friendly assistance which he may expect to get from his landlord in times of stress and strain. The landlord, on the other hand, has also considered the character and circumstances of the raiyat, his means of paying the produce-rent and the quantity that he will receive for the maintenance of himself and his family. If the raiyat is unable to give the produce-rent in times of scarcity and distress, the landlord generally awaits the return of a prosperous season to enable him to pay up his arrears. Thus there is harmony and concord in their mutual relations. Then why disturb such peace and harmony with a view to doing good to the raiyat alone, for commutation means the reduction of the income of the landlord, though this will not help the tenant, for, in times of scarcity, he will not have the wherewithal to pay his money-rent, and the consequence will be that, in the end, he will be sold out of his holding. Where is the benefit to the tenant? It would be wise not to disturb that friendly feeling which is so necessary for the well-being of both the landlord and the tenant, and with that end in view I have moved the omission of this clause."

The Hon'ble Babu Bhupendra Nath Basu said:—

"I don't know if my friend knows the condition of things that prevails in Orissa. The corresponding section in the Bengal Act is No. 40, and those with experience of the collection of rents in Bengal will at once appreciate the difficulties that always attend collection of rent in kind.

"In the first place there are the zamindar's *amlas* who make their appraisement, and sometimes the *nazir* of the Collector's Court is brought in to make the appraisement when the crop is on the field, and disputes always arise when a suit is brought for realisation of rent. The tenant may always

say that the appraisement is too high. There is a large amount of litigation because the landlord never feels safe as to whether he has got a fair share and the tenant is apprehensive that more than a fair share is going to the landlord. I don't see, however, that much harm has ensued from the operation of section 40, and I for one will support the extension of the principle to Orissa. I don't know the actual state of things there; but, on the question of principle, and having regard to the operation of the section in Bengal, I think it fair both to the landlord and tenant, especially in cases where disputes are very frequent as regards the amount of appraisement, the varying crops and other such points, and I think that some safeguard should be introduced."

The Hon'ble MR. DAS said:—

"I don't think it is necessary for me to support the motion; at the same time I see danger ahead. I heard the Hon'ble Babu Bhupendra Nath Basu say that he was anxious that the principle in its entirety should be extended to Orissa, because it is a principle which is welcomed and, within his knowledge, has worked satisfactorily in Bengal, and has prevented disputes. Therefore it should be extended, as a matter of fact, to Orissa. But as a matter of fact we have nothing to do with principles which belong to Bengal only. We are dealing with the state of things as regards Orissa. I remember the other day the Hon'ble Maharajadhiraja Bahadur of Burdwan said that he had heard in my speech the song of the dying swan, and all that I can now say is that Bengal has given us enough of principle, and, methinks, I hear to-day the savage roar of the voracious tiger, the man eater of Bengal!

"Well, I think, Sir, that I have nothing to say to the clause as it stands. There are further concessions which are being very considerately made by the promoters of the Bill, with special reference to the conditions of Orissa, but, in the matter of the principles that the Hon'ble Babu Bhupendra Nath Basu may give us, I may say that I am not prepared to congratulate myself or to thank him for his liberality."

The Hon'ble MR. KERR said:—

"I am afraid, Sir, that Government cannot accept the amendment that the provisions for commutation of produce-rents should be omitted from this Bill. It has long been recognised that the system of produce-rents is liable to great abuse, and that some remedy must be found to enable both landlords and tenants to commute the produce-rents to cash, if they desire to do so. The Hon'ble Member in support of his amendment says that his object is to maintain friendly relations between the landlords and tenants, but experience shows that one of the main obstacles to the continuance of these friendly feelings is the existence of the system of produce-rents. In a very great number of cases, as the Hon'ble Babu Bhupendra Nath Basu has pointed out, the produce-rent is not convenient to the landlord himself. It is true that the produce-rent taken from the raiyat is in most cases higher than he would pay if he were allowed to pay in cash, but the collection of produce-rents gives such opportunities for peculation and swindling to the agents of the landlords, that many landlords often find it advisable, in their own interest, to commute produce rents into cash. Similar considerations apply in the case of the raiyats. It is of course not desirable that commutation should be granted as a matter of course in all cases, but section 40 of the Bengal Tenancy Act* provides that the officer to whom an application for commutation has been made shall consider whether, in all the circumstances of the case, it is reasonable to grant it. In clause 41 of this Bill we have gone a good deal further than the Bengal Tenancy Act,* and specified very definitely certain cases in which the Revenue officer is required to consider very carefully whether he should allow the application for commutation or not. But this is a very different matter from disallowing all applications for commutation, which is the effect the proposed omission would have.

* i.e., Act VIII of 1885.

[*Raja Rajendra Narayan Bhanja Deo; the President; Mr. Kerr; Maulvi Saiyid Muhammad Fakhr-ud-din.*]

I think, Sir, that the omission from a Tenancy Law of all provisions for the commutation of produce rents would make that law a very imperfect one, and I would therefore recommend that this motion should be rejected, even at the risk of bringing down on my head some further metaphors from the rich store-house of the Hon'ble Mr. Das' mind."

The motion was then put and lost.

The following motion was, by leave of the President, withdrawn:—

105. The Hon'ble Raja Rajendra Narayan Bhanja Deo to move that clause 41 be omitted.

The PRESIDENT said:—

"I think I will ask the Hon'ble Member to move amendment No. 107 before No. 106, because the former deals with clause 41 (*1*), and comes first in point of strict order."

107. The Hon'ble Raja Rajendra Narayan Bhanja Deo moved that the words "for half the area of the holding" be added at the end of clause 41 (*1*).

He said:—

"It would be advantageous both to the landlord and to the tenants if the whole area of the holding be protected from commutation. The zamindars specially will then be assured of some quantity of paddy, at least, for their support. When there is a total failure of crops, the tenants will have to pay rent only for half the holding. Such an occurrence is admittedly frequent in Orissa. With these few words I beg to put my motion."

The Hon'ble MR. KERR said:—

"I submit that it would be very undesirable to limit the operation of clause 41 in the manner proposed by the Hon'ble Member. I have already explained to the Council that there are ample provisions in the clause as it stands, enabling and requiring officers trying commutation cases to consider very carefully whether the application should be granted or not. If it is found that, on the whole, the application ought to be granted, it would only be causing unnecessary trouble and confusion to restrict this application to half a holding. Produce rents are difficult enough to collect in any case, and if they are to be collected for petty areas, I imagine that most landlords, in their own interests, would say that it was not worthwhile to maintain them. The point to be looked at is whether commutation should be allowed at all; and if it is to be allowed, it is much better that it should be allowed in full rather than that a part of a holding should still be kept under the troublesome system of produce rent. I therefore oppose this amendment."

The motion was then put and lost.

106. The Hon'ble MAULVI SAIYID MUHAMMAD FAKHR-UD-DIN moved that clause 41 (*2*) (*ii*) be omitted.

He said:—

"Your Honour, I propose that sub-clause 2 (*ii*) of clause 41 be omitted. In the Bengal Tenancy Act,* as originally passed, the power contemplated by this sub-clause was not given to the Settlement Officer. It was in the year 1907 that an amendment to this effect was made in the Bengal

* *i.e.*, Act VIII of 1885.

[*Maulvi Saiyid Muhammad Fakhr-ud-din.*]

Tenancy Act,* and that it is now intended to introduce into this Bill. Now within the last few years we have had sufficient experience of the working of the Settlement Officers in commutation proceedings, and the experience which I have had on account of my appearing sometimes for the tenants and sometimes for the landlords in commutation proceedings, at the last stage of appeal, has obliged me to bring this motion. In Bihar, these commutation proceedings carried out by the Settlement Officer have not been received with any amount of satisfaction either by the landlords or by the tenants. Now, one of the difficulties which has generally been felt in appeal is that after these Assistant Settlement Officers have commuted rents, appeals are filed and appeals are heard some time after the camps of these officers are removed to other places in other districts. Thus, if, on appeal, it is found necessary to remand the case for further inquiry it has to be made over to some subordinate officer present in the district who is engaged on some other work; but generally the appellate court finds that it cannot remand the case; and, upon the materials on the record, however insufficient they may be, the appeals are disposed of. Then again, these Settlement Officers generally go by the old routine; they disbelieve collection papers produced by the zamindars, they disbelieve receipts produced by the tenants, they also do not attach any value to the returns filed by the zamindars or tenants. They record the evidence of two or three men on each side, hear arguments, and then go out to make a local inspection of the fields (generally at a time when there are no crops standing on the lands), prepare classifications of *bhaoli* lands by standing on a few *alangs* only, find out the rentals from the survey record-of rights of same *nakdi* lands in that village or in the vicinity, and thus, without any evidence from any party, style those *nakdi* lands as similar in quality with *bhaoli* lands under commutation; and it is upon the basis of this classification that rents have been commuted in a very large majority of cases. The number of cases in the hands of these Settlement Officers, the manifold work which they have to do, the amount of work which they are required to show to their superior officer, and their short stay in any particular camp, compel these officers to dispose of important matters like commutation proceedings in a very unsatisfactory way. I have come to know of a good many instances in which the parties or their legal agents were unaware of the classification of the *bhaoli* lands, and of the selection of a few plots of *nakdi* lands (on the ground of their being similar in quality and description with *bhaoli* lands) even up to the time that the judgment was delivered. The parties are never given any opportunity of scrutinizing the classification of *bhaoli* lands on the basis of which the Settlement Officers give their decisions. In appeal the appellate court turns round and says: "My Settlement Officer has selected such lands as being of similar description and quality. How can you show me that his procedure is incorrect?" As the matter stands, we can never succeed on this point. I ask you, Sir, is this a fair way of proceeding with commutation cases? Is this proceeding, which makes a permanent change from *bhaoli* into *nakdi*, so lightly to be treated?

"The result of this unsatisfactory method of carrying out these commutations proceedings has been in some cases very hard upon the landlords, and in others upon the tenants. The proceedings have created much dissatisfaction in Bihar. I am unaware of the conditions in Bengal; how it has worked there, it is for the members from Bengal to say.

"The experience which I have gathered in Bihar about these commutation proceedings carried out by the Settlement Officers has compelled me to bring up this amendment, and I hope this Council will pause to consider the matter and decide on the reasonableness or otherwise of my motion. Unfortunately I could not get sufficient time, otherwise I should have produced certified copies of judgments in commutation cases passed by these Assistant Settlement Officers at the first stage as well as at the appellate stage.

"With these words I propose my amendment that clause 41(*z*) (*ii*) be omitted."

* *i.e.*, Act VIII of 1885.

[*Khan Bahadur Maulvi Sarfaraz Husain Khan; Mr. D. J. Macpherson; Babu Bhupendra Nath Basu; Mr. Kerr.*]

The Hon'ble KHAN BAHADUR MAULVI SARFARAZ HUSAIN KHAN said :—

"I rise, Sir, to support the amendment just now moved by my hon'ble friend, Maulvi Saiyid Muhammad Fakhr-ud-din. All that I can say about this is that the proceedings of these Revenue officers have created general dissatisfaction throughout Bihar, and I do not see any reason why this power should be given to them. With these words, I beg to support my hon'ble friend's amendment."

The Hon'ble MR. D. J. MACPHERSON said :—

"The Hon'ble Mover of this amendment takes exception to the power to commute rents being vested in Settlement Officers. He has no objection to these powers being vested in Collectors, Subdivisional Officers or any other officers specially authorized in this behalf by the Local Government. I may inform the Council that, both as Commissioner of a Division and as member of the Board of Revenue, I have had to deal with a great many commutation cases that have come before me on appeal both from Settlement Officers and from Collectors and Subdivisional Officers, and I have no hesitation in assuring the Council that the data and the results of inquiries which Settlement Officers have put on record are much wider in scope and much more reliable and valuable in enabling a conclusion to be come to as to the fairness of the rent commuted than any that I have seen from a Collector or Subdivisional Officer."

The Hon'ble BABU BHUPENDRA NATH BASU said :—

"It is very difficult to support the amendment after what has fallen from the Hon'ble Mr. D. J. Macpherson. I have, however, some experience of commutation proceedings, and I feel no hesitation in supporting my friend the Hon'ble Maulvi Saiyid Muhammad Fakhr-ud-din's amendment. It is quite possible, as the Hon'ble Mr. D. J. Macpherson says, that the records kept by the Collector or the Subdivisional Officer are not so full as those kept by the Settlement Officer, but I do not think that he will deny that these Settlement Officers do not command the same degree of confidence as the Collector or Subdivisional Officer does. It is probably because the Collector or Subdivisional Officer thinks that he has the confidence of the parties before him, and that more or less his decisions are accepted, that he is careless in keeping the records, and they are therefore not kept so carefully as they would otherwise be if he had to deal with these cases in a personal capacity. I have always felt that both the tenants and the landlords concerned repose greater confidence in the Collector or the Subdivisional Officer in dealing with matters of this kind. The innovation contained in the sub-clause under discussion, as my friend will bear in mind, was introduced in 1907 in the then Bengal Council when many of us then in the Council opposed the change on the ground that though it probably would facilitate the commutations, it would not have the same effect as the older procedure, and I am bound to say that our fears have not been dispelled. On the contrary, our apprehensions have been strengthened, and as this practice is going to be introduced into Orissa, I believe that the safeguards which formerly surrounded the provision in Bengal, ought at least to be introduced into Orissa, until further experience has been gained."

The Hon'ble MR. KERR said :—

"I submit, Sir, that the effect of the Hon'ble Member's motion would be to bar from the trial of applications for commutation of produce rents the very officers who are most qualified to carry them, that is, officers engaged in the preparation of a record-of-rights. It is hardly necessary for me to say that an officer who has spent a whole camping season, often from November to July, in any one area, has much better opportunities for gauging the value of the lands and the amount which they are able to pay than Collectors or

[*Maulvi Saiyid Muhammad Fakhr-ud-din.*]

Subdivisional Officers to whom applications for commutation are only made in isolated cases. A Settlement Officer or an Assistant Settlement Officer makes it his business to find out all he can about the different classes of land, and he knows to what lands the land in the commutation suit corresponds and what is the fair cash rent paid for such classes of land. Under the amendment proposed such officers would be unable to carry out a commutation which would be eminently fair to both landlord and tenant. I submit that it would be a most serious matter to take away commutation proceedings from those officers who are best qualified to deal with them, and to insist on their being made over to officers whose opportunities for doing justice in this difficult matter are considerably inferior.

"The Hon'ble Mover of the amendment has said that, in Bihar, the decisions in commutation cases are in some cases hard on the tenants and in others are very hard on the landlords. When we get a complaint of this kind, I think we may take it that the general result is fairly satisfactory. Moreover, I would point out that, even if the amendment were carried, it would be quite useless, as the local Government could, under clause (*iii*), appoint any officer to try these commutation proceedings, and the very first officer that the local Government would appoint under this provision would be a Settlement Officer or an Assistant Settlement Officer."

The Hon'ble MAULVI SAIYID MUHAMMAD FAKHR-UD-DIN said:—

"Your Honour, the Hon'ble Mr. Kerr says that the Assistant Settlement Officer has got the best experience inasmuch as he spends a lot of time in camp, but I must bring to the notice of the Council that these commutation applications are disposed of by officers other than the Attestation Officer or the *khanapuri* officers. Now, one officer is present at the time of the *khanapuri*, a second is present at the time of attestation, and the third disposes of objections under section 103A of Bengal Tenancy Act.* Then these applications are filed before a special officer who either sits at the Sadar or in any head-quarters station and records the evidence, and, after recording the evidence he hears arguments, and, either before or after hearing arguments, he makes a local inspection. He goes and stops on the spot for a few hours and cannot find sufficient time to make an inspection of the lands under commutation. In many instances, I know, complaints have been made that the Assistant Settlement Officer stopped on the spot for one or two hours only, and had only a cursory glance at the fields. He prepares a table and places some lands in the first class, some in the second class and some in third class. He comes back and writes out a judgment. I beg to ask, Sir, if this is the proper way of doing these things. Now, you are going to commute rents for ever. The collection papers have been discarded. The proper procedure would be to go and make a thorough inquiry, look to the lands and prepare a classification of all the *bhaoli* lands, prepare a table of similar *nakdi* lands, and find the parties to adduce evidence to prove that the classification and the table are inaccurate, and in what particulars they are inaccurate. An officer cannot get a knowledge of the locality by paying a flying visit to it for a few hours, and as he has to dispose of so many cases as Assistant Settlement Officer, he cannot be expected to attend to all these matters. If the Hon'ble Member of the Board of Revenue would look at the number of cases these officers have to dispose of within a short time, he would be convinced that, as a matter of fact, it is impossible for Assistant Settlement Officers to devote greater time to making inquiries in the mufassal. So far as the Deputy Collectors are concerned, of course, I am not aware in how many cases out of 100 their reports have been unsatisfactory. I admit, however, that on account of the incompetency of a particular officer, or on account of the want of proper materials unavailable before the final publication of record-of-rights, commutation proceedings might occasionally have been done unsatisfactorily by Deputy Collectors. But we ought not to overlook the fact that the Assistant Settlement Officer has got this advantage, that he is in possession of the record-of-rights.

* *i. e.*, Act VIII of 1885.

[*Maulvi Saiyid Muhammad Fakhr-ud-din.*]

So far as *nakdi* lands in the village and other neighbouring villages are concerned, the Assistant Settlement Officers take the rental from the record-of-rights, while the Deputy Collectors had formerly to go into detailed evidence on this point before the preparation of record-of-rights. You ought to compare the work of a Deputy Collector with the work of an Assistant Settlement Officer done at a time when both officers have an equal and similar advantage in regard to the record-of-rights. I believe, Sir, commutation cases will be more satisfactorily disposed of by Deputy Collectors in those areas where there has been final publication of the record-of-rights. I have known instances where anxiety has been shown by the landlords that commutation cases should not be allowed to proceed before the Assistant Settlement Officer; and, in order to gain their object, all sorts of obstacles have been thrown in the way of the continuance and maintainability of commutation applications. I forgot to point out one important fact to the Council: The *khanapari amin* has to enter the description of the land in the *khasra* at the time when the *khasra* is prepared. If, at that particular time, he finds paddy in any particular land, he will describe it as *dhankar*; if he finds any particular land sown with *rabi*, he will describe it as *bhi*; if he finds any land uncultivated or unsown at the time, he will record it as *parti jadid*. Now these Settlement Officers work upon these descriptions of *bhawi* lands in commutation proceedings. In some of the commutation proceedings they have been forced to admit that the description as given in the record-of-rights was inaccurate. Does this fact not at once convince the members of this Council how thorough and careful an inquiry is needed at the time of commutation proceedings?

"The Hon'ble Mr. Kerr seems to think that as I have submitted to the Council that, in some cases, the result of commutation proceedings has been very hard upon the tenants, and, in other cases, very hard upon the landlords, the general result should therefore be taken to be fairly satisfactory. I am not prepared to accept his conclusion as logically correct. It is on account of logical conclusions of this kind that the Assistant Settlement Officers have not been able to do full justice in commutation proceedings. I do not understand how the Hon'ble Member jumps to the conclusion that the proceedings have been fairly satisfactory. Wherever they have been hard upon the tenants the latter have been ruined; wherever they have been hard upon the landlords, they too have been ruined. I ask you, Sir, can this be called a fairly satisfactory proceeding? From what I have heard just now from the Hon'ble Babu Bhupendra Nath Basu, I find that the people of Bengal have shared the same fate as the people of Bihar, and I think this is the greater reason why such powers should not be conferred upon Assistant Settlement Officers in Orissa."

A division was then taken with the following result:—

Ayes 18.	*Noes 22.*
The Hon'ble Maharaja Bahadur Sir Prodyot Kumar Tagore, Kt.	The Hon'ble Mr. Slacke.
" Kumar Sheo Nandan Prasad Singh.	" Raja Kisori Lal Goswami.
" Babu Bhupendra Nath Basu.	" Mr. Green.
" Lt.-Col. Grant-Gordon	" Mr. D. J. Macpherson.
" Maharajadhiraja Bahadur of Burdwan.	" Mr. Collin
" Maharaja Kumar Gopal Saran Narayan Singh	" Mr. Stevenson-Moore.
" Babu Kirtanand Sinha.	" Mr. Chapman
" Raja Rajendra Narayan Bhanja Deo	" Mr. Finnimore
" Babu Deba Prasad Sarbadhikari.	" Mr. Kerr
" Mr. Apcar.	" Mr. Stephenson.
" Mr. Golam Hossein Cassim Ariff.	" Mr. Maddox.
" Mr. Saiyid Wasi Ahmad.	" Mr. Kuchler.
	" Mr. Morshead.
	" Sir Frederick Loch Halliday, Kt.
	" Mr. Cumming.
	" Mr. Bompas.
	" Mr. Oldham.
	" Mr. H. McPherson.

The Hon'ble Maulvi Saiyid Muhammad Fakhr-ud-din.
" Babu Hrishikesh Laha.
" Mr. Reid.
" Rai Sheo Shankar Sahay Bahadur.
" Mr. Das.
" Khan Bahadur Maulvi Sarfaraz Husain Khan.
The Hon'ble Babu Janaki Nath Bose.
" Sir Frederick George Dumayne, Kt.
" Maulvi Saiyid Zahiruddin
" Rai Baikuntha Nath Sen Bahadur.

The following Members were absent :—

The Hon'ble Mr. Mitra
" Rai Sita Nath Ray Bahadur.
" Maharaja Manindra Chandra Nandi.
" Dr. Abdullah-al-Mamun Suhrawardy.
" Mr. Dutt.
" Babu Mahendra Nath Ray.
" " Braj Kishor Prasad.
" Mr. Dip Narayan Singh
" Babu Bal Krishna Sahay.

The Hon'ble Mr. Norman McLeod and the Hon'ble Mr. Stewart abstained from voting.

The result was *ayes* 18, *noes* 22, and the motion was therefore lost.

The following motion was, by leave of the President, withdrawn :—

108. The Hon'ble Maulvi Saiyid Muhammad Fakhr-ud-din to move that clause 41 (*4*) (*a*) be omitted.

109. The Hon'ble Maulvi Saiyid Muhammad Fakhr-ud-din moved that the following words be added at the end of clause 41 (*4*) (*a*), namely :—

"Provided that such average rent shall not be the sole basis upon which the commutation of the rent shall be calculated."

He said :—

"Your Honour, this amendment relates to clause 41, sub-clause (*4*) (*a*). I wish to add to it "provided that such average rent shall not be the sole basis upon which the commutation of the rents shall be calculated." I am aware of the meaning of this clause (*a*) as it stands in the Bill, and that it has been taken word for word from the Bengal Tenancy Act,* and means that, in commutation proceedings, the officer shall have regard to the average money-rents payable by an occupancy raiyat for lands of a similar description. The sub-clause does not mean that the officer shall be bound to fix the same rents which he finds to be the average money-rent payable for similar lands in the vicinity; but then, inasmuch as there is no express provision in this regard, these officers generally make the average money-rent the sole basis for commutation, without consideration of the fact that such *nakdi* rents were fixed at a particular time and under peculiar circumstances. As there can be no enhancement in the next fifteen years upon the commuted rents, except on the ground of a registered improvement, the commutation officers should have regard to the rise in market prices of staple food crops and the increase of the productive power of the soil, etc. Now this clause was inserted in the Bengal Tenancy Act,* that it might give a clue to the officer for the purpose of coming to the right conclusion as to what should be the fair rate for *bhaoli* lands. It was never intended that it should be the sole basis for fixing the rate of *bhaoli* lands. Inasmuch as my bitter experience is that this clause has been misunderstood by some officers, and specially by some settlement officers, therefore I propose this amendment. For, if it be inserted, there would be no danger of any misapprehension on the part of these officers, and they would never take this average money-rent only as the sole basis of their computations. Of course, in some cases, it is quite possible that they may fix the same rent, and in some cases

* *i.e.*, Act VIII of 1885.

higher rent and in some cases lower rent, and to prevent this, I suggest this amendment."

The Hon'ble MR. KERR said:—

"The sub-clause which we are now considering, reads like this—

"In making the determination, the officer shall have regard to (*a*), (*b*), (*c*), (*d*) and (*e*)"—five things. The Hon'ble Member wants us to add a proviso that he shall only have regard to one of these five things. I think that this is a quite unnecessary provision. It is obvious from the wording of the section that the average money-rent paid by occupancy raiyats for lands of a similar description is not to be the only circumstance on which commutation is to be calculated. But I submit that, as legislators, we should make ourselves ridiculous if we were to lay down a proviso of the nature suggested by the Hon'ble Member. If it is the case that officers misunderstand the provisions of this clause at present and only have regard to (*a*), instead of looking also to the other provisions, then the Appellate Court will keep them right. A compilation has been made of orders of Appellate Courts under section 40 of the Bengal Tenancy Act,* and I think I am right in saying that this particular point has never come up. That being so, I submit that no case has been made out for adding these superfluous words to sub-clause (*4*) (*a*) of clause 41."

The Hon'ble MAULVI SAIYID MUHAMMAD FAKHR-UD-DIN said:—

"Sir, I myself admit that, as a matter of fact, these words will be superfluous; I never said that the clause meant to lay down a counter-proposition of law; but then my proposal to add these words is based simply upon the experience which I have gained of the misapprehensions of settlement officers."

The motion was then put and lost.

110. The Hon'ble Maulvi Saiyid Muhammad Fakhr-ud-din moved that the word "and" be omitted in line 3 of clause 41 (*4*) (*d*) and the following be added after clause 41 (*4*) (*e*), namely:—

"(*f*) any crop-cutting experiments that may have been held on the lands sought to be commuted; and

"(*g*) the result of any local inquiry that may have been made in regard to the kind and amount of produce in the lands sought to be commuted."

He said:—

"Your Honour, in clause 41, sub-clause (*4*) we have got sub clauses (*a*), (*b*), (*c*), (*d*) and (*e*). There is no provision for crop-cutting experiments. So far as sub-clause (*a*) is concerned, the average money-rent is taken into consideration by taking the rent of lands of similar description and of similar advantages. With regard to sub-clause (*b*), that depends either upon the production of collection papers by the landlord or upon the production of rent receipts by the tenants. But our experience is that this sub-clause is very rarely acted upon. The collection papers are disbelieved, the rent receipts are also disbelieved and, therefore, the officer has got no materials before him for knowing what was the actual produce of the land within the ten preceding years or within a shorter period. Then, so far as sub-clauses (*c*), (*d*) and (*e*) are concerned, they relate to charges incurred by landlords in irrigation, in improvements effected by them, and also to the rules laid down in clause 34 regarding enhancement of rent and so forth. Now, there is no provision for crop-cutting experiments. No doubt, crop-cutting experiments, if made in a particular year, should not be the sole guide in fixing the rent, but at least it may give some idea to the Settlement Officer for coming to a conclusion as to what would be a fair rent for the lands. An experiment of this kind will

* *i.e.*, Act VIII of 1885.

show the productive power of the soil, nature of the produce, the advantages and disadvantages of irrigation in that particular year, and all these will serve to demonstrate the fair rent which should be payable for such lands. Therefore I move, Sir, that the two sub-clauses (*f*) and (*g*) which stand in amendment No. 110 may be added to sub-clauses (*a*), (*b*), (*c*), (*d*) and (*e*) in clause 41."

The Hon'ble MR. KERR said:—

"As was the case in regard to the former proposal of the Hon'ble Member, I submit that the present proposals are wholly unnecessary. Sub-clause (4) (*b*), as the Hon'ble Member has pointed out, provides that one of the matters to be looked to in commutation proceedings is the average value of the rent actually received by the landlord during the preceding ten years, or during any shorter period for which evidence may be available. Any officer of average intelligence, who sets out to ascertain the average value of the rent received by the landlord, would naturally make use of any crop-cutting experiments that might have been held, or of any local inquires that might have been made, in calculating the average value of the rent actually received. Of course crop-cutting experiments are not all of equal value; a great many of them are pure rubbish, and the officer has to put them aside. But if any crop-cutting experiments of any value have been made, the Council may rest assured that due regard will be had to them. Then again, as to local inquiries, I do not quite understand to what local inquiries the commutation officer is to pay attention.

"It is by no means clear whether the result of any local inquiry could be made evidence under the Evidence Act;* but, however this may be, Sir, I submit we should be doing wrong in providing in these clauses too minutely for the nature of the evidence which the commutation officer should take into account. He should take into account all the trustworthy evidence he can find: he always makes a local inquiry, and always finds out everything that is possible. He secures a great deal of information which is of no use to him, and other information which is of use to him, and I think we may safely trust him to do his best to ascertain the average value of the rent received, and it would be undesirable to tie his hands as to the exact nature of the evidence on which he is to act."

The Hon'ble MAULVI SAIYID MUHAMMAD FAKHR-UD-DIN said:—

"In sub-clause (4) (*b*) of clause 41, the actual amount of the produce, or the value thereof received by the landlord, will be proved before the officer who commutes rents, either by the production of papers or other evidence; but what is wanted is that there should be some crop-cutting experiment which will induce the officer to believe or disbelieve the papers. My hon'ble friend, Mr. Kerr, says that a great many crop-cutting experiments have been proved to be rubbish, but I do not see why."

The Hon'ble MR. KERR said:—

"The Hon'ble Member's proposal is, "any crop-cutting experiment that may have been held," not that "will be held."

The Hon'ble MAULVI SAIYID MUHAMMAD FAKHR-UD-DIN said:—

"I never meant that these experiments should be held by somebody else, or that the inquiry should be held by somebody else. The officer who is going to commute rents is the person whom I want to go and make a crop-cutting experiment, or he may depute any subordinate officer for the crop-cutting experiment under his own direct supervision. That may be left to his option. Then he will be in a position to judge whether the figures shown in the collection papers by the landlords, or the figures shown in the receipt filed by the tenants, are or are not acceptable."

The motion was then put and lost.

---

* *i.e.*, Act I of 1872.

The following motions were, by leave of the President, withdrawn:—

111. If motion No. 105 be not carried, the Hon'ble Raja Rajendra Narayan Bhanja Deo to move that the words "and is dependent for livelihood upon the share of the produce payable as rent" in lines 2, 3 and 4 of clause 41 (6) (i) be omitted.

112. If motions Nos. 105 or 111 be not carried, the Hon'ble Raja Rajendra Narayan Bhanja Deo to move that the word "or" be substituted for the word "and" in line 2 of clause 41 (6) (i).

113. The Hon'ble Raja Rajendra Narayan Bhanja Deo moved that the word "or" be omitted at the end of clause 41 (6) (i) and inserted at the end of clause 41 (6) (ii), and the following be added after clause 41 (6) (ii), namely:—

"(iii) the commutation will cause hardship on the landlord, or

(iv) the rent in kind agreed upon does not exceed one-fourth of the gross produce of the holding."

He said:—

"I do not wish to press for my sub-clause (iii), but only sub clause (iv) which runs thus:—

'the rent in kind agreed upon does not exceed one-fourth of the gross produce of the holding.'

"With Your Honour's permission I wish to withdraw my sub clause (iii)."

By leave of the President, sub-clause (iii) was accordingly withdrawn.

The Hon'ble RAJA RAJENDRA NARAYAN BHANJA DEO said:—

"If this sub-clause (iv) is introduced, it will be most advantageous, both to the landlord and to the tenant. Clause 71 provides that, legally, half of the produce can be taken by the landlord, whereas I propose here only one-fourth; and so it will benefit the tenant who will not have to pay half of this produce. As far as the landlord is concerned, the landlord will get one fourth of the paddy produce every year; it will increase or decrease according to the produce of the holding. So it is most advantageous both to the landlord and to the tenant, and, as I have already said, clause 71 allows half of the produce. I do not think the Hon'ble Member will object to this, but if there be any mistake in the form of the amendment, or if this clause does not read well with sub-clause (5) of clause 41, I have no objection if the Hon'ble Member accepts it with any technical changes that may be necessary."

The Hon'ble MR. KERR said:—

"I am unable to advise the Council to accept this proposal of the Hon'ble Member, although I recognize that he has gone a good way to meet our wishes in withdrawing the motion which stands in his name in the matter of produce-rent. But this proposal about commutation being refused in cases where rent in kind does not exceed one-fourth of the gross produce of the holding, seems to me to introduce an undesirable complication into the law relating to commutation. There are very few cases now where produce-rents are less than half the gross produce of the holding, and if there are any cases where the proportion is so low as one-fourth I think it would be better for the landlord to agree to commutation and receive a fair rent in cash. From the tenant's point of view, if the tenant is so happy in paying his one-fourth share as I understand the Hon'ble Member thinks he is, then he will not apply for commutation, and the question will not arise. As I have already said, the essential point to be looked at is whether commutation ought to be allowed in the broad interests of the landlords and of the tenants. Where

commutation is allowed, it should be allowed in full, whatever the share of the produce actually paid may be, and the officer entrusted with carrying out the work should be given the fullest freedom of action to commute in a fair and proper manner. I think this amendment is unnecessary, and that it would have very little practical result in fact. The results it would have would be confusing and troublesome. I must therefore oppose it."

The Hon'ble MR. H. MCPHERSON said :—

"There is only one point I should like to bring to the notice of the Council. I understand that the object of the Hon'ble Mover is to ensure that the landlord shall receive a certain portion of his rent in grain, because it is convenient for him to receive it in that form. I should like him to bear in mind in this connection that most of the produce-rents now realized in Orissa are derived from *nij-jote* and *nij-chas* lands. In this Bill we propose to transfer about one lakh of acres from the category of *nij-chas* to the category of *nij-jote* and thereby avoid any difficulty the landlord may have in managing his private lands on the produce-rent system. It seems to me we have thus done enough to meet the landlord's wishes in regard to receiving a portion of his rent in kind. At present, the landlord's difficulty is that, if he makes over his *nij-chas* lands to a raiyat for cultivation on the produce system, the raiyat is legally an occupancy-raiyat, and it becomes possible for him to apply for commutation. But if we call these *nij-chas* lands *nij-jote*, the landlord can make what arrangement he pleases with raiyats for the cultivation of the lands, and as the area in question is a very large area—it may be about one-tenth of the cultivated land in Orissa—I do not think there is any real complaint worth going into, or any real obstacle to the landlords receiving a portion of their rents in grain."

The Hon'ble RAJA RAJENDRA NARAYAN BHANJA DEO said :—

"Sir, I intend to propose, with regard to *nij-jote* and *nij-chas* land, an amendment dealing with the condition of holding for a term of years or from year to year. I have as yet had no chance of making my proposal, but if that condition is retained, I fear very few proprietors of Orissa will have their *nij-jote* and *nij-chas* lands. Apart from that, of course, this does not apply to *nij-jote* and *nij-chas*. Landlords will no doubt get some paddy from these lands, but what I say is that where one-fourth is taken by the landlord,—and it is admitted that it would be beneficial to the tenants were he to take so little,—I do not see why the Government should not accept my proposal. It is a very reasonable one. The small landlords of Orissa require more paddy than money, so it would be a great advantage to them if they were paid in paddy."

A division was then taken with the following result :—

Ayes 8.	*Noes 27.*
The Hon'ble Maharaj-Kumar Gopal Saran Narayan Singh.	The Hon'ble Mr. Slacke.
,, Kirtanand Sinha.	,, Raja Kisori Lal Goswami.
,, Raja Rajendra Narayan Bhanja Deo	,, Mr. Greer.
,, Maulvi Sayyid Muhammad Fakhr-ud-din.	,, Mr. D. J. Macpherson.
,, Babu Hrishikesh Laha.	,, Mr. Collin.
,, Mr. Reid.	,, Mr. Stevenson-Moore.
,, Mr. Das.	,, Mr. Chapman.
,, Khan Bahadur Maulvi Sarfaraz Hossain Khan.	,, Mr. Finnimore.
	,, Mr. Kerr.
	,, Mr. Stephenson.
	,, Mr. Maddox
	,, Mr. Kuchler.
	,, Mr. Morshead.
	,, Sir Frederick Loch Halliday, Kt.
	,, Mr. Cumming.
	,, Mr. Bompas.
	,, Mr. Oldham.
	,, Mr. H. McPherson.

The Hon'ble Babu Janaki Nath Bose.
" Sir Fredrick George Dumayne, Kt.
" Kumar Sheo Nandan Prasad Singh.
" Lt.-Col. G. Grant-Gordon.
" Mr. Norman McLeod.
" Mr. Stewart.
" Mr. Golam Hossein Cassim Arif.
" Maulvi Saiyid Zahiruddin.
" Rai Bankuntha Nath Sen Bahadur.

The following members were absent:—

The Hon'ble Mr. Mitra.
" Babu Bhupendra Nath Basu.
" Rai Sita Nath Ray Bahadur.
" Maharaja Manindra Chandra Nandi.
" Dr. Abdullah-al-Mamun Suhrawardy.
" Mr. Dutt.
" Babu Mahendra Nath Ray.
" " Braj Kishor Prasad.
" " Bal Krishna Sahay.

The Hon'ble Maharaja Bahadur Sir Prodyot Kumar Tagore, Kt., the Hon'ble Maharaja Bahadur of Burdwan, the Hon'ble Babu Deba Prasad Sarbadhikari, the Hon'ble Mr. Apcar, the Hon'ble Mr. Saiyid Wasi Ahmad and the Hon'ble Rai Sheo Shankar Sahay Bahadur, abstained from voting.

The result of the division was, *ayes* 8, *noes* 27, and the motion was therefore lost.

114. The Hon'ble Mr. M. S. Das moved that the word "public" be inserted before the word "religious" and also before the word "charitable" in line 1 of clause 41 (*c*) (*n*).

He said:—

"Sir, considering the peculiar conditions of Orissa, some allowance has been made in the provisions of the Bill with regard to commutation. I fully appreciate the kindly intention of Government in doing this. I, for myself, do believe, Sir, that commutation works hardship in some cases, and it is in the interests of the raiyat also that in some cases he should give produce. If an exception ought to be made, the exception ought to be made in favour of institutions, charitable or religious, provided they are of a public nature. Everybody has a god, and charitable institutions and religious institutions ought to include, I suppose, family religious institutions. It will be very difficult to prove whether the produce is really used for religious or charitable purposes or not, and I should think the intention of the Legislature in introducing this provision to safeguard the interests of the raiyats will be defeated by leaving open a trap-door for escaping from it. These are my reasons, and I submit that the clause ought to be amended so as to read 'public religious' or 'public charitable endowment'."

The Hon'ble Babu Janaki Nath Bose said:—

"I beg to oppose this motion, Sir. It does not matter in the least whether the religious establishment belongs to the public—that is, whether the public have a right of supervision over it,—or whether members of certain families have the right of management, so long as the produce-rent is devoted to the purposes of the endowment. So long as that produce is consumed either for feeding Brahmins or beggars or poor people in one's own dwelling-house or in a *math*, there is no difference in principle; and there are family idols which are worshiped by the family,

and money and articles of food are spent for the upkeep of the worship; and, at the same time, there are nominally public endowments where the man in charge misappropriates the income of the establishment. The real object in this case is that if the produce is actually wanted for the *thakur*, or for feeding of the poor, or for any other charitable purpose, the Settlement Officer may refuse commutation, because it will injuriously affect the income of the man in charge of the establishment; and we know very well, Sir, that in Orissa, there are a large number of so called public endowments, but that the *mahants* are greater sinners in respect of misappropriation of funds than the house-holders, who generally do spend all the income of *debattar* property in the upkeep and maintenance of their own family god. So I beg to submit that there is absolutely no reason why this amendment should be carried."

The Hon'ble RAI BAIKUNTHA NATH SEN BAHADUR said:—

"It seems to me, Sir, that the amendment has been proposed from a mistaken notion of the provision made in sub-clause (6) (*a*), because a religious or charitable endowment is mentioned as a factor to be taken into account by the officer to decide whether commutation should be allowed or not. No matter whether the endowment, religious or charitable, is of a private nature or of a public nature, the officer has to determine whether the proceeds of the rent are used for charitable or religious purposes, and it is therefore absolutely unnecessary to inquire into the nature of the institution. The mere fact of appropriation of the proceeds of the land for religious or charitable purposes is all that would be necessary for the officer to inquire into in order to determine whether commutation should be allowed or not. The motion would introduce a perfectly unnecessary element, and therefore I go against it."

The Hon'ble MR. DAS said:—

"Sir, having regard to the remarks which have fallen, I beg to withdraw this amendment."

The motion was then, by leave of the President, withdrawn.

The following motion was, by leave of the President, withdrawn:—

115. The Hon'ble Mr. M. S. Das to move that the words "and the effect of the commutation on the ranyat" be added after the figures "71" at the end of clause 41 (6) (*a*).

116. The Hon'ble Rai Sheo Shankar Sahay Bahadur moved that for the words "he shall take into consideration the effect of commutation on the income of the landlord, unless such landlord has recovered rent in excess of the rate allowed by section 71" in lines 12, 13 and 14 of clause 41 (*a*), the following words be substituted:—

'he shall refuse the application, if the commutation is likely materially to affect the income of the landlord.'

He said:—

"Regard being had to the peculiar condition of Orissa zamindars, it is agreed that some concession should be made to the small landlords who, and to the small religious and charitable endowments which, require food-grains for their maintenance and for the offerings or for doles; and it is conceded that, in such cases, commutation should not be allowed. It is clear from the Statement of Objects and Reasons, paragraph 25, that it is proposed that, in such cases, the application should be refused; but the clause itself, as drafted by the Hon'ble Member in charge of the Bill, does not go far enough. He simply provides that the officer shall take into consideration the effect of

commutation on the income of the landlord. I submit that that is a half-hearted concession. What if the officer, though taking into consideration the facts you lay down, and although satisfied that this will materially affect the income of the landlord concerned, still allows commutation? There is no bar to his doing so. You indicate the points which he should consider, but you do not go farther and indicate in the clause itself your intention that in case he finds what you lay down he shall refuse the application. If you wish to make a concession in favour of these people, do not leave their fate absolutely in the hands of these officers, but lay down the law clearly which they will follow."

The Hon'ble MR. SAIYID WASI AHMAD said —

"I beg to support this amendment, which has been proposed by the Hon'ble Rai Sheo Shankar Sahay Bahadur. Experience has given us the idea that, in Bihar especially, there has been great hardship to the zamindars from commutation proceedings, and it invariably so happens that petty zamindars lose materially whenever a tenant applies for commutation of rent, and therefore it seems to me that, regard being had to the condition which is at present prevailing in Bihar particularly, this amendment ought to be accepted by the Members of this Council."

The Hon'ble MR. KERR said:—

"Government is unable to accept the amendment of the Hon'ble Member. The circumstances which Government considers should be looked to in connection with the effect of commutation on the landlord have been clearly specified in the clause as it now stands, and it would be quite impossible to limit the commutation officer's freedom of action in the manner proposed by the Hon'ble Member by requiring him to refuse the application in all cases in which commutation is likely materially to affect the income of the landlord. It is highly probable that the result of such a clause would be to prevent commutation being resorted to at all, because there are very few cases in which commutation would not affect the income of the landlord one way or the other. In many cases, as I have explained, it might affect him for the better, because the landlord would get a certain cash rent instead of an uncertain produce-rent out of which he is often swindled by his amla. The Hon'ble Member will no doubt say that the word 'materially' sufficiently limits the scope of his amendment; but I do not think that it does, because the word 'materially' is one of those words about which the Courts take very different views. I would submit that the amendment goes too far in restricting the freedom of action of a commutation officer, and that it should be rejected, and the Council will note that the arguments adduced by the Hon'ble Mr. Saiyid Wasi Ahmad, which relate to Bihar only, have no bearing whatever on the issue before them."

The motion was then put and lost.

117. The Hon'ble Raja Rajendra Narayan Bhanja Deo moved that the words "he shall refuse the application" be substituted for the words "he shall take into consideration the effect of commutation on the income of the landlord" in lines 12 and 13 of clause 41 (*6*).

He said:—

"Sir, as the clause stands at present, it gives too much discretion to the Revenue officer, and so I propose that he shall refuse the application when he thinks the income of the landlord is likely to be affected.

The Hon'ble MR. KERR said:—

"It is the same motion, Sir, which has just been rejected by the Council. Though it is not the same in form, it is the same in effect."

[*The President; Raja Rajendra Narayan Bhanja Deo; Rai Sheo Shanker Sahay Bahadur; Mr. Kerr; Maulvi Saiyid Muhammad Fakhr-ud-din.*]

The PRESIDENT said:—

"Yes, with certain modifications, it appears to be almost identical with the previous motion. Does the Hon'ble Mover wish it to be put again?"

The Hon'ble RAJA RAJENDRA NARAYAN BHANJA DEO said:—

No, Sir, I do not wish to press it again.

The motion was then, by leave of the President, withdrawn.

118. The Hon'ble Rai Sheo Shankar Sahay Bahadur moved that the words "unless such landlord has recovered in excess of the rate allowed by section 71" in lines 13 and 14 of clause 41 (*6*) be omitted.

He said:—

"I will have to say something later on with regard to clause 71. For the present, I have to point out that by the introduction of these words into the clause, the concession proposed to be made to charitable institutions loses its graciousness, and you punish the landlord for his past conduct. If he has realized rent in excess of what is considered reasonable, he must be shown no mercy, but his rent must be commuted to money-rent. I find that the Commissioner of the Orissa Division (see his opinion on page 4 of the Collection of Opinions) is prepared to omit these words. There is also a strong body of opinion in favour of the omission."

The Hon'ble MR. KERR said:—

"If it be the general wish of the Council that this amendment should be carried, I have no objection to offer on the part of Government. I do not myself attach very much importance to these words, though, theoretically no doubt, it may be argued that a landlord who disregards the provisions of the law relating to produce-rents, does not deserve to have any consideration shown to him when his tenants apply for commutation of produce-rents; but I do not think the retention of these words would have very much practical effect in making landlords conform to the provisions of clause 71, and they might simply complicate commutation proceedings by creating a dispute as to whether or not the landlord had, as a matter of fact, conformed to the provisions of the law. The time of the commutation officer would then be taken up with settling an unprofitable dispute which could not have much result on the final decision of the case. If therefore the Council accepts this amendment, Government will not object."

The motion was then put and agreed to.

The following motion was, by leave of the President, withdrawn:—

119. The Hon'ble Raja Rajendra Narayan Bhanja Deo moved that the words "unless such landlord has recovered rent in excess of the rate allowed by section 71" in lines 13 and 14 of clause 41(*6*) be omitted.

120. The Hon'ble Maulvi Saiyid Muhammad Fakhr-ud-din moved that the words "in the Court of the District Judge" be substituted for the words "in the prescribed manner and to the prescribed officer" in lines 2 and 3 of clause 41 (*8*).

He said:—

"I have put forward in this amendment the anxious desire of the general public that these commutation proceedings should be tried in Civil Courts. Now, even if a right of appeal be given to the parties

from the orders passed, either by the Revenue officer or by the Subdivisional Officer or the Collector, to the District Judge, I think that will be meeting half way the desire of the general public. Here, in this clause, a right of appeal has been given, and it is laid down that an order 'shall be subject to appeal in the prescribed manner and to the prescribed officer.' I believe the prescribed manner and the prescribed officer have been defined in clause 213 of the Bill. Now, if the right of appeal be given to the District Judge from the orders passed by the Revenue officers under clauses 105 and 106, or if the appeal lies before a special Judge—who would eventually be the District Judge with powers specially vested in that behalf.—I think the general desire of the public will be satisfied. With this idea in my mind, I move this amendment. If the appeal lies to the District Judge, the Settlement Officers, the Subdivisional Officers or the Deputy Collectors will know that their action will be scrutinized in the Civil Courts, and their proceedings will be more satisfactory in that case."

The Hon'ble MR. KERR said:—

"Government must oppose this motion. It has always been recognized that commutation is a revenue proceeding, and that Revenue officers have much greater facilities than the Civil Courts for dealing with applications for the commutation of produce-rents. A District Judge dealing with appeals regarding commutation cases, would be at an enormous disadvantage as compared with a Collector or Settlement Officer who is accustomed to deal with such cases. Government does not consider that the adoption of the amendment would in any way facilitate the fixing of fair and equitable rent in commutation proceedings. It would only delay the proceedings, and the result would not be so satisfactory as at present, and I must therefore oppose it."

The Hon'ble MR. H. MCPHERSON said:—

"I desire to add, Sir, that not only is the Hon'ble Member's proposal revolutionary as regards the rest of Bengal, but it is also entirely unsuitable to Orissa, for Orissa is the one portion of the province in which the trial of rent-suits is conducted by Revenue officers."

The motion was then put and lost.

121. The Hon'ble Babu Hrishikesh Laha moved that the following be added at the end of clause 41 (*8*), namely:—

"(*9*) Nothing in this section shall apply to *sanja* rent."

He said:—

"*Sanja* rent being a fixed produce-rent, cannot be placed in the same category as other produce-rents."

The Hon'ble MR. KERR said:—

"Government cannot accept the proposal that clause 41 of the Act should not be applied in the case of *sanja* rents. These rents, as the Council probably know, are rents consisting of a certain definite amount of produce which must be paid whatever the outturn of the crop may be. Such rents are often the most unfair and unjust of all produce-rents, and they press specially heavily on the raiyats in bad years when crops are small and prices are high. Many cases are known in which the amount of crop actually reaped is less than the rent payable, and the raiyat then has to go out and buy the balance required to make up his rent, at prices far above the normal. I do not say of course that all landlords press for the collection of their *sanja* rents in full in a bad year, but a good many landlords certainly do, and it is against such action on the part of harsh and inconsiderate landlords that protection is specially necessary for the raiyats. If commutation is not allowed, it would not be possible to extend any protection to such raiyats, and I must therefore oppose the amendment."

[*Mr. H. McPherson; Babu Hrishikesh Laha; Rai Sheo Shankar Sahay Bahadur; Raja Rajendra Narayan Bhanja Deo.*]

The Hon'ble MR. H. MCPHERSON said:—

"I should like to supplement the Hon'ble Mr. Kerr's remarks by quoting from the Orissa Settlement Report the remarks of the Hon'ble Mr Maddox on the subject of *sanja* rents. He says in paragraph 536:—

'*Sanja* means a contract, and is used of a rent in kind fixed at a certain quantity, payable in good seasons or bad. It is very rare in both Cuttack and Balasore, but common throughout the Puri district . . . . . .

'In Cuttack and Puri the *sanja* varies from 1 to 1½ *gannis* per *ganl*, or say from three maunds to eight maunds per acre The average is about six maunds to the acre, worth in a good year Rs. 6, and in a bad, about Rs. 9. It thus presses most heavily on the raiyat just when he is least able to afford it.'

"The cash equivalents would be considerably higher now. Having this description of the *sanja* produce-rent before it, the Council should, I think, reject this amendment."

The motion was then put and lost.

Clause 42.

The following motions were, by leave of the President, withdrawn:—

122. The Hon'ble Babu Hrishikesh Laha to move that clause 42 be omitted.

Clause 46.

123. The Hon'ble Rai Sheo Shankar Sahay Bahadur to move that after clause 46 (*d*) the following be added, namely:—

"(*e*) on the ground that he has disclaimed the title of his landlord."

Clause 49.

124. The Hon'ble Rai Sheo Shankar Sahay Bahadur moved that the words "on a lease" in lines 2 and 3 of clause 49 (*a*) be omitted.

He said:—

"These words may imply that those proprietors only would be protected under this clause who have taken the precaution of making a settlement on a written lease. But it is not clear whether the Hon'ble Member in charge means 'on a *written* lease,' or is prepared to extend the privilege to oral leases also It appears that in Orissa the proprietors of *nij jote* lands had not taken that precaution which they should have taken. It would be a great hardship to them if the privilege is taken away from them."

The Hon'ble RAJA RAJENDRA NARAYAN BHANJA DEO said:—

"Sir, I beg to support the motion of the Hon'ble Rai Sheo Shankar Sahay Bahadur. Though the condition has all along existed in Orissa ever since Act X of 1859* was introduced, it has never been seriously taken either by landlord or by tenant. A few landlords in Orissa give their private lands on leases for years or from year to year It is understood that the landlord has the right of immediate possession, and the Hon'ble Mr. Maddox admits it. If this clause is put in force, it will cause great hardship both to the landlords and to the tenants."

The Hon'ble MR. H. MCPHERSON said:—

"I cannot accept this amendment nor amendment No. 125, because the language of the Bill merely repeats the language of the Bengal Tenancy Act†

* *i.e.*, the Bengal Rent Act, 1859.
† *i. e.*, Act VIII of 1885.

[*Mr. M. S. Das; Babu Janaki Nath Bose; Mr. Kerr.*]

and the language of section 6 of Act X of 1859* and no reason has been shown why that language is unsuitable and requires amendment. The distinction between 'privileged land' and 'non-privileged land' is that if the proprietor takes the precaution of letting out the former on regular lease for a term of years or from year to year, he can bar the accrual of occupancy-rights. If there be no lease to refer to, it is impossible to say what were the circumstances or conditions under which the raiyat was allowed to cultivate the land, and it must be assumed that the land was let without any reservation against the accrual of occupancy-rights. It is surely not too much to ask of a proprietor that he should take the small precaution of granting a lease, if he desires to preserve the privilege conferred by the Chapter. If you will turn to page 44 of Rampini's Bengal Tenancy Act† you will see that a lease granted to a tenant need not in all cases be in writing. 'Parol leases,' it is said, 'are in most cases quite valid. In this Act† the word 'lease' is apparently used sometimes in the sense of a parol contract of letting.' Of course, if a landlord does not take the trouble to reduce a lease to writing, he takes a certain amount of risk."

The Hon'ble MR. DAS said:—

"Sir, reference has been made to Act X of 1859* and also to the Bengal Tenancy Act.† It has been said that these words are to be found in those two Acts. But I think there was a statement made by the Hon'ble Member to my left‡ to the effect that as a matter of fact the words are simply dead letters and are never acted upon The point is, Sir, that in cases like this experience should be the basis of legislation; this enactment has actually proved to be a dead letter; to re-enact it would be like insuring a dead person. Any law which creates a stringent relationship between two classes, who, like the landlord and the tenant, have been in the relation of payer and payee, should be avoided, unless the absence of it has brought about a worse state of things. An enactment which has been in force for a long time but has never been put into force—if that enactment is made more stringent by new legislation, the result will be that these people, through no fault of their own, will be compelled to enter into agreements and leases which would involve expense, while the absence of this enactment has not caused any inconvenience or hardship in the past If the Hon'ble Member in charge of the Bill or the Hon'ble Mr Maddox —who have said that difficulties are sometimes experienced in distinguishing between *nij jote* and *nij-chas* lands, and I admit that sometimes there are such difficulties—if they could have said that in 75 per cent or even in 60 per cent. of cases, there are such difficulties, I certainly would not have supported this motion. But, as a matter of fact, we know that friendly relationship exists, and has existed for long, between the zamindar and his tenant. Then why introduce a law which will make that relationship unfriendly?"

The Hon'ble BABU JANAKI NATH BOSE said:—

"The Hon'ble Member in charge of the Bill admits that the word 'lease' here does not necessarily mean a written document. It may mean a verbal agreement. So we come to this: that the fact that a certain holding was held for a term of years or from year to year can be let out by written agreement or oral. If that be the true interpretation of the clause as it stands in the Bill, I think the word 'lease' may be omitted from it, as it might give rise to confusion in the minds of Deputy Collectors. The words 'on a lease' may, I think, be expunged."

The Hon'ble MR. KERR said:—

"I submit, Sir, this amendment is of a very serious nature. The provision with which we are dealing is one which enables the landlord to bar the accrual

* i.e., the Bengal Rent Act, 1859.
† i.e., Act VIII of 1885.
‡ Hon'ble the Raja of Kanika.

[*Mr. Kerr.*]

of occupancy rights in what are called a proprietor's private lands. Surely, Sir, if the landlord desires to bar the accrual of occupancy rights which, under the principles of the Bill, are the elementary rights of every raiyat we ought to expect him to take a little trouble to put it on record that he is desirous of barring the application of the ordinary law to a tenant. These words have been in force in the law for many years; since, I think, the Act of 1859,* and so far as I know, there have been no complaints that they have worked unfairly. The Hon'ble Mr. Das says that friendly relations between the landlord and tenant have been existing for many years, but others might like to put it that the tenant is too much afraid of the landlord to dispute with him. However that may be, wherever there are *nij-jote* lands, there has been some sort of agreement, written or oral, that the tenant did not regard himself as entitled to occupancy rights. In future, the area which is treated as *nij-jote* will be very much increased, and, at the same time, the demand for raiyati land will go up, while the raiyati area will be seriously curtailed. We have, therefore, every right to ask the proprietors who wish to bar the accrual of occupancy rights to signify their intention by granting a lease to that effect, and the matter should not be left open to dispute for want of sufficient proof. I, therefore, oppose the amendment, and suggest that the language of the Bill should be left as it stands."

A division was then taken with the following result:—

Ayes 15.

The Hon'ble Babu Janaki Nath Bose.
" Kumar Sheo Nandan Prasad Singh.
" Maharajadhiraja Bahadur of Burdwan
" Maharaja Kumar Gopal Saran Narayan Singh.
" Babu Kirtanand Sinha.
" Raja Rajendra Narayan Bhanja Deo.
" Babu Deba Prasad Sarbadhikari.
" Mr. Saiyid Wasi Ahmad
" Maulvi Saiyid Muhammad Fakhr-ud-din.
" Babu Hrishikesh Laha.
" Mr. Reid.
" Rai Sheo Shankar Sahay Bahadur.
" Mr. Das.
" Rai Baikuntha Nath Sen Bahadur.
" Khan Bahadur Maulvi Sarfaraz Husain Khan.

Noes 25.

The Hon'ble Mr Slacke.
" Raja Kishori Lal Goswami.
" Mr. Greer.
" Mr. D. J. Macpherson.
" Mr. Collin.
" Mr. Stevenson-Moore.
" Mr. Chapman.
" Mr. Finnimore.
" Mr. Kerr.
" Mr Stephenson.
" Mr. Maddox.
" Mr Küchler.
" Mr. Morshead.
" Sir Frederick Lock Halliday, Kt.
" Mr. Cumming.
" Mr. Bompas.
" Mr. Oldham.
" H. McPherson.
" Maharaja Bahadur Sir Prodyot Kumar Tagore, Kt.
" Sir Fredrick George Dumayne' Kt.
" Lt.-Col. G. Grant-Gordon.
" Mr Norman McLeod.
" Mr. Stewart.
" Mr. Golam Hossein Cassim Ariff.
" Maulvi Saiyid Zahiruddin.

The following Members were absent:—

The Hon'ble Mr. Mitra.
" Babu Bhupendra Nath Basu.
" Rai Sita Nath Ray Bahadur.
" Maharaja Manindra Chandra Nandi.
" Mr. Apcar.
" Mr. Abdullah-al-Mamun Suhrawardy.
" Mr. Dutt.
" Babu Mahendra Nath Ray.
" Babu Braj Kishor Prasad.
" Mr. Dip Narayan Singh.
" Babu Bal Krishna Sahay.

* *i.e.*, the Bengal Rent Act, 1859.

[*Raja Rajendra Narayan Bhanja Deo; Mr. M. S. Das; Mr. H. McPherson.*]

The result of the division was *ayes* 15, *noes* 25, and the motions were therefore lost.

The following motion may, by leave of the President, be withdrawn.

125. The Hon'ble RAJA RAJENDRA NARAYAN BHANJA DEO to move that the words "when they are held by a tenant on a lease for a term of years, or on a lease from year to year," in lines 1 to 3 of clause 49 (*a*) be omitted.

126. The Hon'ble MR. M. S. DAS moved that clause 49 (*c*) be omitted.

He said:—"This is a clause which has been added in Select Committee. There are lands belonging to Government or to local authority. As far as Government lands are concerned, I am not in a position to say exactly how they stand; but I know that, a few years back, the lands owned by local authorities were let out to tenants without any restriction as regards the accrual of occupancy rights. Before a provision of that nature, which actually takes away the rights of other people, or might take away vested rights of other people, is enacted, it is but fair that stricter inquiry should be made as to whether these lands, which are held by these people under such circumstances, are lands in which no right of occupancy has accrued. We have not got any facts before us in this connection, because this clause was introduced in Select Committee. Secondly the clause is of an important nature, because the position of Government will certainly be exposed to severe criticism by the public. Government has given lands, and the people who cultivate the lands will think that Government, who talked so much of protecting the interests of the raiyat, have deprived them of rights which they could acquire under the zamindars. Now to legislate and take away such vested rights would be, I think, extremely unfair."

"We are legislating now to take away vested rights. To do so would be prejudicial to the prestige of Government, and certainly not fair to the zamindars. I think, Sir, in a case of this nature, full inquiry ought to be made, for I wish to protest as strongly as I can, and with as much emphasis as it is possible for me to command, against any legislation which disturbs vested interests. When a man has got a right, you have no right to take away his right. That is, I submit, the worst form of despotism. Therefore, on this ground, I submit that this clause should not be passed."

The Hon'ble MR. H. MCPHERSON said:—

"Sir, it may perhaps remove the sting from the Hon'ble Mr. Das' remarks, if I say that there is no intention of attaching retrospective effect to this provision of the law. This sub-clause commended itself to all the members of the Select Committee who were present when it was discussed. The Hon'ble Mr. Das was not present then, or he might now perhaps have a more exact appreciation of what the sub-clause means. Its object is to enable Government and the local authorities to let out for cultivation road-side and other similar lands, which are in their possession, to the raiyats of the villages through which the roads pass, without being handicapped by the accrual of occupancy rights. The accrual of these occupancy rights might necessitate the re-acquisition of the lands, should they be subsequently required permanently for public purposes. I think that, as a former Chairman or Vice-Chairman of the District Board of Cuttack, the Hon'ble Mr. Das must know the difficulty that has been experienced in the management of road-side lands on account of the fact that all road-side lands have not been acquired under the Land Acquisition Act.* In some cases, lands used as roads were made over free of cost, for the purpose, by the zamindar of the estate through which the roads pass. All we want to do is to place these lands that have been so obtained in the same position as lands that have been acquired for public purposes under the Land Acquisition Act.* We propose an addition to the law which will enable Government and local

* *i. e.*, Act I of 1894.

authorities to give short-term leases to raiyats for the temporary cultivation of these lands. We take away no existing rights. Without this provision, if we have made over road-side lands to village raiyats for temporary cultivation, we cannot get them back when they are wanted afterwards for public purposes. Under the existing law, we may be forced to buy back from the cultivator the land that we have given him only for temporary cultivation. It seems to me that there is nothing so very extraordinary in this proposal that it should arouse the excitement and indignation of the Hon'ble Member. The villagers are quite willing to cultivate road-side lands on these terms, and I see no objection to an arrangement which is acceptable to them and, at the same time, convenient to Government and the local authorities concerned. The only alternative is that Government should refrain from giving out these lands to raiyats for cultivation and keep them unoccupied. The proposed addition to the law is a very small one and seems to me to be very reasonable. I oppose this amendment."

The Hon'ble BABU JANAKI NATH BOSE said :—

"I think this provision is a salutary one. We have actually met with difficulty as regards Government lands which may be let out for a year or two; and if people are allowed to acquire rights of occupancy, the lands will not be available for any public purpose. Such is also the case with Municipal lands and land belonging to District Boards, and I think that this provision removes the difficulties which have been felt in regard to the possession of such lands."

The Hon'ble MR. DAS said :—

"I do not say, Sir, that it is not necessary to have such a provision in the interests of the public. Far be it from me to say that. But what I do say is this, that we have not had sufficient opportunity to inquire into the state of things in Orissa. What is the present state of things in Orissa with regard to lands covered by this sub-clause? In the absence of full knowledge on this point it is not safe to legislate here. The Hon'ble Member in charge of the Bill says that it is not intended to give retrospective effect to this sub-clause, but I do find a difference in this, that whereas, in a previous clause, it is said that, in order to protect lands from accrual of right of occupancy, the land must have been given out under certain conditions from year to year, in this clause there is no such provision."

The Hon'ble MR. H. MCPHERSON said :—

"May I, Sir, point out to the Hon'ble Member that the clause is governed by the same proviso? (On reference to the Bill) I beg his pardon, it is not. It merely places these lands on the same footing as similar lands formally acquired under the Land Acquisition Act."*

The Hon'ble MR. DAS said :—

"We do not find the same conditions. I think it my duty to Government to raise my voice against any difference being made between the private zamindar and the Government zamindar, simply because the latter is the Government. Right should be respected both by Government and the raiyat, and perhaps by Government all the more; and this I say because, whatever may be my position, I stand second to none in my anxiety to uphold the prestige of the British Government, and nothing prejudices it so much as to make a difference between private rights and Government rights."

* *i.e.*, Act I of 1894.

[*Raja Rajendra Narayan Bhanja Deo.*]

A division was then taken with the following result:—

Ayes 7

The Hon'ble Maharaj-Kumar Gopal Saran Narayan Singh.
" Babu Kirtanand Sinha.
" Raja Rajendra Narayan Bhanja Deo.
" Babu Deba Prasad Sarbadhikari
" Mr. Saiyid Wasi Ahmad
" Maulvi Saiyid Muhammad Fakhr-ud-din.
" Mr. Das.

Noes 32

The Hon'ble Mr. Slacke.
" Raja Kisori Lal Goswami.
" Sir Greer.
" Mr. D. J. Macpherson
" Mr. Collin.
" Mr. Stevenson Moore
" Mr. Chapman
" Mr. Finnimore
" Mr. Kerr.
" Mr. Stephenson
" Mr. Maddox.
" Mr. Kuehler.
" Mr Morshead.
" Sir Frederick Loch Halliday, Kt.
" Mr Cumming.
" Mr Bompas
" Mr. Oldham
" Mr. H. McPherson.
" Babu Janaki Nath Bose
" Maharaja Bahadur Sir Prodyot Kumar Tagore, Kt.
" Sir Frederick George Dumayne, Kt.
" Lt.-Col. G Grant-Gordon
" Maharajadhiraja Bahadur of Burdwan.
" Mr. Norman McLeod.
" Mr. Stewart.
" Mr. Golam Hossein Cassim Ariff.
" Babu Hrishikesh Laha.
" Maulvi Saiyid Zahiruddin.
" Mr. Reid.
" Rai Sheo Shankar Sahay Bahadur
" Rai Barkuntha Nath Sen Bahadur.
" Khan Bahadur Maulvi Sarfaraz Husain Khan.

The following members were absent:—

The Hon'ble Mr Mitra.
" Babu Bhupendra Nath Basu.
" Rai Sita Nath Ray Bahadur.
" Maharaja Manindra Chandra Nandi
" Mr Apcar.
" Dr. Abdullah-al Mamun Suhrawardy.
" Mr Dutt.
" Babu Mahendra Nath Ray.
" " Braj Kishor Prasad.
" Mr Dip Narayan Singh.
" Babu Bal Krishna Sahay.

The result of the division was *ayes* 7, *noes* 32, and the motion was therefore lost.

127. The Hon'ble Raja Rajendra Narayan Bhanja Deo moved that the word "or" at the end of clause 49 (*b*) be omitted and inserted at the end of clause 49 (*c*), and that the following be added as sub-clause (*d*), namely:—

"(*d*) land purchased by a proprietor in execution of a decree in a suit for arrears of rent under the provisions of this Act, when such land is held by a tenant on a lease for a term of years or on a lease from year to year."

[*Mr. Kerr.*]

He said:—

"This practically is the same proposal that I brought forward under clause 21 (No. 68), with this slight difference that *there* I wanted the landlord to have the occupancy right, while *here* I wish to prevent the accrual of occupancy right when the land is held by tenants under leases for a term of years or from year to year. Of course the reasons I put forward in moving that amendment equally apply here. If a raiyat purchases any land, he can prevent his under-raiyat from acquiring occupancy right in that holding; but if a landlord buys this land, he cannot prevent a raiyat from acquiring occupancy rights."

The Hon'ble MR. KERR said:—

"As the Hon'ble Member says, the reasons in favour of this amendment are the same as those in favour of amendment No. 68. That amendment has been rejected by Council, and I am rather surprised that the Hon'ble Member is bringing the same proposal forward now in another form. I suppose he is not out of order, but I do not think it necessary to deal at any great length with this proposal. I would merely remind the Council that the settled policy of Government is to prevent the acquisition of occupancy rights by a landlord. Government's object in adopting this policy is not to injure the landlord but to secure that, when the land has been let out to a cultivating raiyat, that raiyat shall acquire occupancy rights in the land. The Hon'ble Member's intention is that the landlord should be enabled to convert lands, purchased at sales in execution of decrees for arrears of rent, into his *nij-jote*. As I have stated, this would be against the settled policy of Government, and against the settled policy of this Bill, and I must therefore oppose the amendment."

The motion was then put and lost.

The Council was then adjourned to Thursday, the 21st March, 1912, at 11 A.M.

A. W. WATSON,

Offg. Secy. to the Bengal Legislative Council.

CALCUTTA,

The 26th March, 1912.

B. S. Press—22-5-1912—897J—450—E. G.

Proceedings of the Council of the Lieutenant-Governor of Bengal assembled for the purpose of making Laws and Regulations under the provisions of the Indian Councils Acts, 1861 to 1909 (24 & 25 Vict., C 67, 55 & 56 Vict., C 14 and 9 Edw. VII, C.4).

THE Council met in the Durbar Hall at Belvedere on Thursday, the 21st March 1912, at 11 A.M.

Present:

The Hon'ble SIR FREDERICK WILLIAM DUKE, K.C.I.E., C.S.I., Lieutenant-Governor of Bengal, sub. *pro tem.*, *presiding*.

The Hon'ble MR. F. A. SLACKE, C.S.I., *Vice-President*.

The Hon'ble RAJA KISORI LAL GOSWAMI.

The Hon'ble MR. R. T. GREER, C.S.I.

The Hon'ble MR. D. J. MACPHERSON, C.I.E.

The Hon'ble MR. E. W. COLLIN.

The Hon'ble MR. C. J. STEVENSON-MOORE, C.V.O.

The Hon'ble MR. E. P. CHAPMAN.

The Hon'ble MR. B. K. FINNIMORE.

The Hon'ble MR. J. H. KERR, C.I.E.

The Hon'ble MR. H. L. STEPHENSON.

The Hon'ble MR T. BUTLER (after 3 P.M.).

The Hon'ble MR. S. L. MADDOX, C.S.I.

The Hon'ble MR. G. W. KUCHLER, C.I.E.

The Hon'ble MR. L. F. MORSHEAD.

The Hon'ble SIR FREDERICK LOCH HALLIDAY, KT., M.V.O., C.I.E.

The Hon'ble MR. J. G. CUMMING, C.I.E.

The Hon'ble MR. C. H. BOMPAS.

The Hon'ble MR. C. E. A. W. OLDHAM.

The Hon'ble MR. H. MCPHERSON.

The Hon'ble BABU JANAKI NATH BOSE.

The Hon'ble MAHARAJA BAHADUR SIR PRODYOT KUMAR TAGORE, KT.

The Hon'ble SIR FREDERICK GEORGE DUMAYNE, KT.

The Hon'ble KUMAR SHIVO NANDAN PRASAD SINGH.

The Hon'ble BABU BHUPENDRA NATH BASU.

The Hon'ble RAI SITANATH RAY BAHADUR.

[*Mr. H. McPherson.*]

The Hon'ble LT.-COL. G. GRANT GORDON, C.I.E.

The Hon'ble SIR BIJAY CHAND MAHTAB, K.C.S.I., K.C.I.E., I.O.M., Maharajadhiraja Bahadur of Burdwan.

The Hon'ble BABU KIRTANAND SINHA.

The Hon'ble RAJA RAJENDRA NARAYAN BHANJA DEO.

The Hon'ble BABU DEBA PRASAD SARBADHIKARI.

The Hon'ble MR. J. G. APCAR.

The Hon'ble MR. NORMAN MCLEOD.

The Hon'ble MR. F. H. STEWART, C.I.E.

The Hon'ble MR. GOLAM HOSSEIN CASSIM ARIFF.

The Hon'ble MR. SAIYID WASI AHMAD.

The Hon'ble MAULVI SAIYID MUHAMMAD FAKHR-UD-DIN.

The Hon'ble BABU HRISHIKESH LAHA.

The Hon'ble MAULVI SAIYID ZAHIR-UD-DIN.

The Hon'ble MR. D. J. REID.

The Hon'ble RAI SHEO SHANKAR SAHAY BAHADUR.

The Hon'ble MR. MADHU SUDAN DAS, C.I.E.

The Hon'ble RAI BAIKUNTHA NATH SEN BAHADUR.

The Hon'ble KHAN BAHADUR MAULVI SARFARAZ HUSAIN KHAN.

The Hon'ble BABU BRAJ KISHOR PRASAD.

THE ORISSA TENANCY BILL, 1912.

*Clause 13 A.**

The Hon'ble MR. H. MCPHERSON said:—

"Sir, in accordance with your ruling† of yesterday, I move that the Council do first proceed to-day to a consideration of clauses 13A to 13C and 25A, my re-drafts of which Hon'ble Members have now had time to consider.

"I moved yesterday that clause 13A be accepted by the Council as amended in item No. 1A of the re-drafted clauses which the Secretary has included in the separate list laid on the table. My object was not to rule out all the amendments which appear in the List of Amendments, Annexure A, under the head of clause 13A. I have ascertained, however, that the only amendments standing under clause 13A which Hon'ble Members desire to press are those numbered 28, 32 and 36, which stand in the name of the Hon'ble Rai Sheo Shankar Sahay Bahadur. I think it would be convenient if the Hon'ble Member first of all proposed these amendments, and that, after they have been considered, my proposals, as contained in item 1A, should be put to the Council. If any of the amendments proposed by the Hon'ble Member are accepted by the Council, necessary modifications can be made in my re-drafted form of clause 13A. The amendments are equally applicable

* See the second foot-note, on page 87 of the proceedings of 20th March.
† For the Presidents' ruling, see page 94 of the proceedings of 20th March.

to that amended clause and to clause 13 A as it came from the Select Committee. It practically means that we shall consider the new clause 13 A as if it came in that form from the Select Committee."

The following motions were then, by leave of the President, withdrawn:—

26. The Hon'ble Rai Sheo Shankar Sahay Bahadur to move that the words "inheritance or succession" be substituted for the word "transfer," and the words "heir or successor" be substituted for the word "transferee," wherever they occur in clause 13 A (*1*), (*2*) and (*3*).

27. The Hon'ble Rai Sheo Shankar Sahay Bahadur to move that the words "inheritance of or succession to" be substituted for the words "every transfer of" in line 1 of clause 13 A (*1*).

28. The Hon'ble Rai Sheo Shankar Sahay Bahadur moved that the word "heritable" be inserted before the word "tenure" in line 1 of clause 13 A (*1*).

He said:—

"My ground for moving this amendment is that the clause, as it stands in the Bill as re-drafted by the Select Committee, makes all tenures of every kind and description heritable. This is very unjust. Let me take a concrete case. Suppose that the Maharajadhiraja Bahadur of Burdwan gave a lease to an old servant of his, or to a relation or to a friend for life, on a certain *jama*, on the distinct understanding that the grant will only be for life and that it will cease to exist on the death of the grantee, and that the tenure will revert to the Maharaja's estate after the death of the grantee. This is not a suppositious case, because we know that there are leases of this kind. I know, for instance, that, in the Bamili Raj, there are some instances of these leases, and there is nothing improper in granting a lease of that kind. Now, I will assume that the Maharajadhiraja of Burdwan has granted this lease for life, and I would ask Your Honour and Members of this Council to apply the law as laid down in this clause to a lease of that kind. The Council will find that the clause reads thus:—'In the case of every transfer of a tenure or portion of a tenure by succession the landlord shall be required to recognize the transfer, provided that the transferee shall pay him a fee amounting to Rs. 2, excepting in the case of a *bajaftidar* when the fee shall be Re. 1.' So that, although that lease exists on the clear and distinct understanding that the tenure shall revert to the Maharaja's estate after the death of the grantee, the landlord, that is, the Maharaja in this instance, will be required,—in other words he will be bound,—to recognize the transfer provided that the requisite sum of Rs. 2 is paid. Then the clause runs thus:—'If in any such case the landlord refuses to accept the requisite fee, the transferee or his successor in interest may deposit such fee with the Collector, and at the same time apply for registration of the transfer. The Collector shall thereupon cause the fee to be delivered to the landlord in the prescribed manner, and shall, by an order in writing, declare that the transfer has been duly registered.'"

"And further:—

"If an application for the registration of the transfer of a tenure or portion thereof under sub-section (*1*) is not made within a period of six months from the date of the transfer, and if the registration fee authorized by the said sub-section is not deposited along with the application, the transferee or his successor in interest shall not be entitled to recover at any time after the expiry of the said period by suit or other proceedings any rent which may become due to him as the owner of such tenure or portion between the date of the transfer and the date of the application for registration."

I submit that, under this clause, the Maharaja may break his head against a stone wall, but he will not be able to turn out the heir of the person to whom he made the grant on the distinct understanding that it was only for life and would revert to the Maharaja's estate after the death of the grantee. He has got no remedy provided for in this clause. You do not provide even that he can go to the Collector and tell him, "Well, this is not a heritable tenure, this was given for life, and the grantee's heir has no right whatever to be

recognized by me." You do not even give the Collector jurisdiction; you stop there. Under the language of this clause, I doubt very much whether the Maharaja would be able to bring a suit in the Civil Court. So the Maharaja is debarred for ever from turning out a person who has no right to be there. I submit that this is a very preposterous proposition of law. If you had, as you proposed in the Statement of Objects and Reasons, followed the Chota Nagpur Tenancy Act, you would have proceeded on safer grounds. Section 11 of the Chota Nagpur Tenancy Act provides:—

"When any tenure or portion thereof is transferred by succession, inheritance, sale, gift or exchange, the transferee or his successor in title shall cause the transfer to be registered in the office of the landlord to whom the rent of the tenure or portion is payable," etc., etc.

I need not read the whole section. Sub-clause (5), however, is important It reads thus:—

"Nothing in this section shall—

(*i*) validate a transfer of any tenure or portion thereof which by the terms upon which it is held, or by any law or local custom, is not transferable; or

(*ii*) affect the right of the landlord to resume a resumable tenure."

This section in the Chota Nagpur Tenancy Act, if adopted here, would have covered all the objections which I have raised with regard to the absence of the word "heritable" in clause 13 A (*1*).

In any case, I beg to submit that if you add the word "heritable" before "tenure," that will remove all the objections which I have pointed out.

The Hon'ble MR DAS said:—

"The amendment proposed really comes to this, at least the form in which it has been put by the Hon'ble Member really comes to this, that this clause, as it stands, removes all distinction between heritable and resumable tenures. There are certainly heritable tenures and resumable tenures, and I do not think that it can possibly be the intention of the Hon'ble Member in charge to remove that distinction, and make *resumable* tenures *heritable* tenures. But then we have to take into consideration by whom this Act is to be administered and what the wording of the Act is. The Collector, after giving notice to the landlord to appear and be heard, shall decide whether the applicant is the successor or not. And "successor" means a person who succeeds by testamentary or intestate succession, and the Collector has to decide whether simply he is the successor under the Act, or rather the clause as it stands. It does not authorize the Collector to go into the question whether the property does descend to the successor or not. The Collector simply decides whether the person is the successor or not. The Collector would think he is the successor, because, in regard to some other property, he is so. For instance, he has inherited his holdings and he has inherited his house. And as this Act has to be administered by Deputy Collectors too, they might think, "well he is the successor with regard to other properties; why should he not be successor in regard to this property as well?" I think the Hon'ble Member in charge of the Bill will agree with me that the wording, as it stands, is liable to be mistaken in that way, or rather misinterpreted in that way. Then, of course, neither this clause nor any amount of legislation done here can possibly remove the difference between *resumable* tenures and *heritable* tenures But there we disagree with the Hon'ble Member in charge: he says, why use unnecessary words? We say, "words do not cost us much, neither does the printing, and it is much better to remove doubts."

The Hon'ble MR. MCPHERSON said:—

"Sir, I oppose this proposal because I think it is wholly unnecessary. I do not know personally of the existence of any tenures in Orissa that are not heritable. But I understand that the Hon'ble Member wishes to make a reservation in favour of temporary tenures that are only for a lifetime. He is thinking perhaps, in particular, of *ijara* tenures, which may not be heritable. The clause, as it stands, will not apply to such a tenure, for if it be not

[*Mr. Maddox; Rai Sheo Shankar Sahay Bahadur; Mr. Chapman; Mr. Apcar; the President; Maulvi Saiyid Muhammad Fakhr-ud-din; Mr. M. S. Das.*]

heritable, there can be no transfer by succession, and the Collector will be unable to find that the applicant is the transferee by succession. If the thing is not transferable, there can be no transfer.

"I also oppose the addition because it was not deemed necessary by the Orissa Members when we discussed this clause, and I think they are the best judges of what is suited to their case. They have accepted the clause as re-drafted, and that is sufficient guarantee that the addition is not required.

"Another objection is that if you put in a word like that, it merely tempts parties to raise the issue of heritability in every case. We do not want to encourage unnecessary litigation by suggesting to the parties that this question should be raised in every case. I think that on the whole it would be better to leave the word out."

The Hon'ble Mr. Maddox said:—

"I agree with the Hon'ble Mr. McPherson, Sir, that it is unnecessary to include the words proposed It seems to me that the clause does not apply to tenures of the kind that the Hon'ble Mover of the amendment has suggested. If cases relating to such tenures do come before the Courts at all, it will be argued either that there is no succession, the tenure having been granted for life, or that there cannot be any succession in tenures granted for life. I therefore agree with the Hon'ble Mr. McPherson in opposing the amendment."

The Hon'ble Rai Sheo Shankar Sahay Bahadur said:—

"I have only to draw the attention of the Hon'ble Member to the wording of the clause which runs thus:—'In the case of every transfer of a tenure or a portion of a tenure by succession.' It does not make any reservation with regard to any kind of tenure: it makes tenures of every kind and description transferable. The Hon'ble Member in charge of the Bill says that if it is not heritable then in that case this clause does not apply. How does he say this? Transfer by succession in this clause means inheritance. So that, whenever a tenure is inherited by a legal heir, whether it is heritable or not, this clause will apply. That is my objection. I would like some law officers of the Crown to interpret this. Of course if it does not include tenures of the kind which I have enumerated I have nothing to say, and I would not press this amendment."

The Hon'ble Mr. Chapman said:—

"I agree with the Hon'ble Mr. McPherson and the Hon'ble Mr. Maddox that it is undesirable to put unnecessary words into the clause. The clause obviously does not require it, and it is therefore quite unnecessary to retain the words. And experience will bear out that any unnecessary words in a clause are apt to be mischievous."

The Hon'ble Mr. Apcar said:—

"Sir, may I ask this question. Will the insertion of this word prejudicially affect any of the parties concerned?"

The President said:—

"The Hon'ble Mr. Chapman has just pointed out that unnecessary words are generally prejudicial."

The motion was then put and lost.

The following were, by leave of the President, withdrawn:

29. The Hon'ble Maulvi Saiyid Muhammad Fakhr-ud-din to move that the words "a portion of a tenure" in lines 1 and 2 of clause 13 A (*1*) be omitted.

30. The Hon'ble Rai Sheo Shankar Sahay Bahadur to move that the words "by succession" in line 2 of clause 13 A (*1*) be omitted.

31. The Hon'ble Mr. M. S. Das to move that the words "be required to" in line 2 of clause 13 A (*1*) be omitted.

Rai Sheo Sankhar Sahay Bahadur; Mr. H. McPherson; Raja Rajendra Narayan Bhanja Deo; Babu Hrishikesh Laha.]

32. The Hon'ble Rai Sheo Shankar Sahay Bahadur moved that the words "or his successor in interest" in line 2 of clause 13 A (2) be omitted.

He said:—

"This clause deals with inheritance, but if we introduce these words 'successor in interest' it will apply not only to cases of inheritance, but also to cases of transfer by the heirs. 'Successor in interest' is a very wide term: it does not mean only a person who succeeds by right of inheritance, but it also means a person who succeeds by, say, a right of gift, and apparently that is not the object of the Hon'ble Member in charge. The Hon'ble Member in charge of the Bill deals with inheritance in this clause, and with regard to transfer he has got another clause 13 C."

The Hon'ble MR. H. MCPHERSON said:—

"The apprehension of the Hon'ble Member is that the words 'successor in interest' may be interpreted as covering successor in interest by sale, or exchange or gift. There was not in my opinion any danger of this, because the Collector is to be satisfied that the applicant is the successor, that is, the successor by inheritance. The object of adding the words 'successor in interest' was to provide for a case in which there may have been more than one transfer by succession before the application for registration is made. A man may die and be succeeded by his son, and before the son has registered, he also may die and be succeeded by his son. I have, however, thought of endeavouring to meet the wishes of the Hon'ble Member by considering whether it would not be better to drop the words 'in interest' after the word 'successor', and use simply the word 'successor'. I have put the point to the Hon'ble the Legal Remembrancer, and he suggests that, instead of the words 'successor in interest', we may make the point more clear by using the word 'heir.' Is the Hon'ble Member willing to accept this alternative?"

The Hon'ble RAI SHEO SHANKAR SAHAY BAHADUR said:—

"Yes. I will move that instead of the words 'his successor in interest' the words 'his heir' be substituted."

The motion was then put in the amended form and agreed to.

The following motions were, by leave of the President, withdrawn:—

33. The Hon'ble Raja Rajendra Narayan Bhanja Deo to move that the words "The Collector shall cause notices of the application to be fixed in the house of the tenure-holder and in the cutcherry of the landlord, and, after deciding any objection made by any person interested, shall thereupon" be substituted for the words "The Collector shall thereupon" in lines 4 and 5 of clause 13 A (2).

34. If motion No. 33 be not carried, the Hon'ble Raja Rajendra Narayan Bhanja Deo to move that the words "after giving notice to the landlord to appear and be heard" be inserted after the words "The Collector" in line 4 of clause 13 A (2).

35. The Hon'ble Babu Hrishikesh Laha to move that the words "after serving notice upon the landlord and hearing his objections, if any, decide whether the applicant is the successor or not, and, if he is satisfied that he is the successor" be substituted for the word "thereupon" in lines 4 and 5 of clause 13 A (2). The whole sentence, therefore, to read as follows:—

"The Collector shall, after serving notice upon the landlord and hearing his objections, if any, decide whether the applicant is the successor or not, and, if he is satisfied that he is the successor, cause the fee to be delivered to the landlord in the prescribed manner, and shall, by an order in writing, declare that the transfer has been duly registered."

[*Rai Sheo Shankar Sahay Bahadur; Mr. H. McPherson.*]

36. The Hon'ble Rai Sheo Shankar Sahay Bahadur moved that the words "the landlord shall be entitled to recover the said registration fees by suit and" be inserted after the word "application" in line 5 of clause 13 A (*3*).

He said:—

"I will at once try to remove the misapprehension which may be in the mind of the Hon'ble Member with regard to the wording of my amendment. My object is that the landlord may be entitled to recover by suit the prescribed fee. I do not mean that the landlord will be entitled to recover rent from the tenants. The clause does not provide that the landlord shall be entitled to bring a suit to recover the amount of the requisite fees. It simply says that the tenant will pay. If the tenant does not pay, then, in that case, he will not be entitled to recover his rent from his under-tenant. It does not provide that the landlord shall include this fee in his claim for rent, or separately bring a suit for it. What I propose is that the landlord should be authorized to recover these fees, either by bringing a separate suit, or including them in his suit for the recovery of the rent."

The Hon'ble MR. H. MCPHERSON said:—

"I do not know whether the Hon'ble Member has modified the words as they stand in his amendment. As it stands, the grammatical interpretation of the words is that, if the application for registration be not made within six months, the superior landlord steps into the shoes of the under-landlord and is entitled to recover rent from the under-landlord's tenants. That, I understand, is not the object of the Mover, but that is the effect of his words. If the Council accept his idea, it will be necessary to alter his amendment to 'the landlord shall be entitled to recover the said registration fees by suit and—"

The Hon'ble RAI SHEO SHANKAR SAHAY BAHADUR said:—

"I am willing to add those words."

The Hon'ble MR. H. MCPHERSON said:—

"I regret that I cannot accept this proposal even though it be amended by the addition of the words 'the said registration fee' after 'recover,' though I have a certain amount of sympathy with its object. The idea is that if the successor does not come up to the scratch and apply for registration, the landlord ought to be able to press registration upon him and recover the fee. Under Act X of 1859* and under the Bill, as amended, we leave the transferee to take action and place him under certain disabilities if he neglects to do so. I think it is preferable to leave it at that for the present. When we have observed the working of the transfer clauses for a few years, it will be possible to say whether they attain the desired object and to propose amendments if they fail. I do not think that the time has yet come for the introduction of an innovation of this sort. I therefore oppose the amendment."

The motion was then put in the amended form and lost.

The following motion was, by leave of the President, withdrawn:—

37. The Hon'ble Rai Sheo Shankar Sahay Bahadur to move that a new proviso be added after clause 13 A (*3*) as follows, namely:—

"Provided always that nothing in this section shall be construed to authorize a division of a tenure or distribution of the rent payable in respect thereof unless it is made with the express consent in writing of the landlord or of his agent duly authorized in that behalf."

* *i.e.* The Bengal Rent Act, 1859.

[*Mr. H. McPherson; Maulvi Saiyid Muhammad Fakhr-ud-din; Raja Rajendra Narayan Bhanja Deo; Rai Sheo Shankar Sahay Bahadur.*]

*1A. The Hon'ble Mr. H. McPherson then moved that the following be substituted for sub-clauses (*1*) and (*2*) of clause 13 A, namely:—

"(*1*) In the case of every transfer of a tenure or portion of a tenure by succession, the landlord shall recognize the transfer, provided that the transferee shall pay him a fee amounting to rupees two, except in the case of a *bajiaftidar*, when the fee shall be rupee one.

"(*2*) If, in any such case, the landlord refuses to accept the requisite fee, the transferee or his heir may deposit such fee with the Collector, and, at the same time, apply for registration of the transfer. The Collector, after giving notice to the landlord to appear and be heard, shall decide whether the applicant is the successor or not; and, if satisfied that such applicant is the successor, he shall cause the fee to be delivered to the landlord in the prescribed manner, and shall, by an order in writing, declare that the transfer has been duly registered."

The motion was put and agreed to.

The Hon'ble MR. H. MCPHERSON said:—

"It is also necessary that I should move a small consequential amendment in sub-clause (*3*) where the expression 'successor in interest' is used in the fifth line, the amendment being that 'heir' be substituted for 'successor in interest' in that line," so that the wording of the whole clause may be in accord."

The motion was put and agreed to.

Clause 13 B.

The following motions were, by leave of the President, withdrawn:—

38. The Hon'ble Maulvi Saiyid Muhammad Fakhr-ud-din to move that the words "or portions thereof" in line 3 of clause 13 B (*1*) and the words "or portion" in line 2 of the proviso to the same clause be omitted.

39. The Hon'ble Raja Rajendra Narayan Bhanja Deo to move that the words "or *sikmi zamindar*" be inserted after the words "*kharida jammabandi*" in line 3 of clause 13 B (*1*) (*b*).

40. The Hon'ble Rai Sheo Shankar Sahay Bahadur had given notice to move that the words "or his successor in interest" in line 2 of clause 13 B (*2*) be omitted.

He said:—

"With your permission, Sir, I will move the following amended motion with regard to this clause, namely, that for the words 'successor in interest' in line 2 the word 'heir' be substituted."

The Hon'ble MR. H. MCPHERSON said:—

"I do not think the same considerations apply in this case, where we are delaying with transfers by sale, gift or exchange."

The motion was then, by leave of the President, withdrawn.

The following 21 motions were then, by leave of the President, withdrawn:—†

41. If motion No. 38 be carried, the Hon'ble Maulvi Saiyid Muhammad Fakhr-ud-din to move that the words "a portion thereof" in line 2 of clause 13 B (*3*) be omitted.

* This was item No. 1A on the list of "fresh amendments" which was laid on the table on the 20th March (*see* p. 87 of the proceedings of 20th March).

† The explanation of this large number of withdrawals is that the more important points contained in these amendments had been incorporated in the re-draft of clause 13C which was laid on the table by the Hon'ble Member in charge at the meeting of the 20th March (*see* p. 87 of the proceedings of that date.).

42. The Hon'ble Rai Sheo Shanker Sahay Bahadur to move that the words "the landlord shall be entitled to recover by suit and" be inserted after the word "application" in line 5 of clause 13 B (*3*).

43. The Hon'ble Rai Sheo Shankar Sahay Bahadur to move that the following proviso be added after clause 13 B (*3*), namely:—

"Provided always that nothing in this section shall be construed to authorize a division of a tenure or distribution of the rent payable in respect thereof unless it is made with the express consent in writing of the landlord or of his agent duly authorized in that behalf."

Clause 13 C.

44. The Hon'ble Rai Sheo Shankar Sahay Bahadur to move that clause 13 C be omitted.

45. If motion No. 44 be not carried, the Hon'ble Rai Sheo Shankar Sahay Bahadur to move that for clause 13C (*1*), (*2*), (*3*) and the Explanation, the following be substituted, namely:—

"13C. (*1*) Except as provided in section 13 B, every transfer by sale, gift or exchange of any tenure or portion of a tenure shall be invalid unless it was made with the consent of the landlord, or unless there is a custom, usage or customary right of such transfer without the consent of the landlord on payment of a fee being made to him.

"(*2*) When any tenure or portion of a tenure is so transferred, with or without the consent of the landlord, as aforesaid, the landlord, on registration of the transfer in his office, shall be entitled to levy a registration fee as follows, namely:—

(*a*) In the case of a sale, Rupees twenty-five *per centum* or the market value of the tenure or portion of the tenure transferred:

Provided that, until sufficient reason to the contrary is shown, the market value shall be deemed to be the consideration money as shown in the deed or document affecting the transfer, or, where there is no such deed or document, the consideration money actually paid for the transfer.

(*b*) In the case of a gift or exchange, a fee six times the annual rental of the tenure or portion thereof, as the case may be, or, if rent be not payable in respect of the tenure or portion thereof—then a fee of Rupees ten:

Provided that, where rent is paid in kind and is fluctuating, the average yield to the landlord during five agricultural years preceding the sale shall, for the purposes of this section, be taken as the annual rental of the tenure or portion thereof.

"(*3*) If, in any case, the landlord accepts the fee authorized by sub-section (*2*), his consent to the transfer shall be deemed to have been given.

"(*4*) If, in any case, a dispute arises between the transferee and the landlord either with regard to the validity of the transfer or with regard to the fee payable for such transfer, the landlord or the transferee shall apply to the Collector who shall inquire into and decide the same.

"(*5*) Nothing in this section shall affect the right of either party to bring a suit in the Civil Court to contest the correctness of the finding of the Collector with regard to the validity or otherwise of the transfer, but, subject as above and to any appeal or revision as provided for in this Act, the order of the Collector under this section shall be final.

[*Rai Sheo Shankar Sahay Bahadur; Maulvi Saiyid Muhammad Fakhr-ud-din; Raja Rajendra Narayan Bhanja Deo; Babu Hrishikesh Laha.*]

"(*6*) If, notwithstanding the order of the Collector to the contrary, the landlord refuses to accept the requisite fee, the transferee may deposit such fee with the Collector, who shall cause the said fee to be delivered to the landlord in the prescribed manner, and shall, by an order in writing, declare that the transfer has been duly registered.

"(7) Nothing in this section shall be construed to authorize a division of a tenure or distribution of the rent payable in respect thereof unless it is made with the express consent in writing of the landlord or of his agent duly authorized in that behalf."

46. The Hon'ble Rai Sheo Shankar Sahay Bahadur to move that the words "the landlord shall be entitled to recover by suit and" be inserted after the word "application" in line 5 of clause 13 C (*4*).

47. The Hon'ble Maulvi Saiyid Muhammad Fakhr-ud-din to move that the words "or portion of a tenure" be omitted in clause 13 C (*1*) wherever they occur.

48. The Hon'ble Raja Rajendra Narayan Bhanja Deo to move that the words "within six months from the date of transfer" be inserted after the word "shall" in line 4 of clause 13 C (*1*)

49. The Hon'ble Babu Hrishikesh Laha to move that the words "market value" be substituted for the words "consideration money" in line 2 of clause 13 C (*1*) (*a*).

50. If motion No. 47 be carried, the Hon'ble Maulvi Saiyid Muhammad Fakhr-ud-din to move that the words "or portion" in lines 4 and 5 of clause 13 C (*1*) (*b*) be omitted.

51. The Hon'ble Raja Rajendra Narayan Bhanja Deo to move that the words "recognized the transfer" be substituted for the words "accept the requisite fee" in lines 1 and 2 of clause 13 C (*3*).

52. The Hon'ble Babu Hrishikesh Laha to move the following amendments in clause 13 C (*5*), viz.:—

(*i*) that the words "transferee or his successor" be substituted for the word "landlord" in line 6;

(*ii*) that the words "to obtain registration of the transfer of the tenure or a portion thereof" be substituted for the words "to refuse his consent to the transfer" in line 7;

(*iii*) that the words "transferee or his successor" be substituted for the word "landlord" in line 8; and

(*iv*) that in the same line, the word "not" be omitted after the word "is."

The whole sentence, therefore, to read as follows:—

"The Collector, after giving notice to the landlord to appear and be heard, shall thereupon inquire and decide whether the transferee or his successor is entitled by custom, or for any other good and sufficient reason, to obtain registration of the transfer of the tenure or a portion thereof; and, if the Collector finds that the transferee or his successor is so entitled, he shall cause the said fee to be delivered to the landlord in the prescribed manner, and shall, by an order in writing, declare that the transfer has been duly registered."

53. The Hon'ble Raja Rajendra Narayan Bhanja Deo to move that the words "tenure is transferable by custom without the consent of the landlord and whether the landlord has" be substituted for the words "landlord is entitled by custom, or for" in line 6 of clause 13 C (*5*).

[*Raja Rajendra Narayan Bhanja Deo; Babu Hrishikesh Laha; Maulvi Saiyid Muhammad Fakhr-ud-din; Mr. H. McPherson.*]

54. The Hon'ble Raja Rajendra Narayan Bhanja Deo to move that the words "tenure is so transferable and the landlord has no good or sufficient reason to refuse his consent" be substituted for the words "landlord is not so entitled" in line 8 of clause 13 C (*3*).

55. The Hon'ble Raja Rajendra Narayan Bhanja Deo to move that the words "and any arrears of rent due" be inserted after the words "he shall cause the said fee" in line 9 of clause 13 C (*3*).

56. The Hon'ble Babu Hrishikesh Laha to move that the following proviso be added at the end of clause 13 C (*3*), namely:—

"Provided that nothing in this section shall confer the right of subdividing a tenure without the landlord's consent, and that the transfer of a portion of a tenure and the registration of the same by the landlord shall not be deemed to constitute a subdivision of the tenure. The holder of the tenure and the transferee of the portion thereof shall be jointly and severally liable to the landlord for the rent of the entire tenure."

57. If motion No. 52 be carried, the Hon'ble Babu Hrishikesh Laha to move that the Explanation to clause 13 C (*3*) be omitted.

58. The Hon'ble Raja Rajendra Narayan Bhanja Deo to move that the Explanation to clause 13 C (*3*) be omitted.

59. The Hon'ble Maulvi Saiyid Muhammad Fakhr-ud-din to move that the following be substituted for the Explanation to clause 13 C (*3*), namely:—

"*Explanation*.—The landlord may refuse registration of the transfer on the ground that there is no custom of transfer, unless it is shown that, by such custom, he is not entitled to refuse consent to the transfer of a tenure."

60. If motion No. 58 be not carried, the Hon'ble Raja Rajendra Narayan Bhanja Deo to move that the words "The landlord shall not be entitled to refuse registration of the transfer on the ground of custom, unless he can show that by such custom he is entitled to refuse consent to the transfer of tenures" in lines 1 to 4 of the Explanation to clause 13 C (*3*) be omitted.

61. If motions Nos. 58 and 60 be not carried, the Hon'ble Raja Rajendra Narayan Bhanja Deo to move that the words "The fact that the landlord is in the habit of charging fees on the registration of transfers of tenures shall not by itself be taken as proof that he is entitled by custom to refuse his consent to the recognition of transfers in individual cases" in lines 4 to 8 of the *Explanation* to clause 13 C (*3*) be omitted.

†2A. The Hon'ble Mr. H. McPherson then, with the permission of the President, moved that the following be substituted for clause 13 C (*1*), namely:—

"(*1*) In cases other than those covered by section 13 B, when any tenure or portion of a tenure is transferred by sale, gift or exchange, the transferee or his successor in interest shall apply to the landlord to whom the rent of the tenure or portion thereof is payable for registration of the transfer, and the landlord shall, in the absence of good and sufficient reason to the contrary, allow the registration of the transfer. The fee payable on such transfer shall be—

Transfer in other cases.

(*a*) in the case of a sale, rupees twenty-five *per centum* of the consideration money, or the fee specified in clause (*b*), whichever is greater, and

† This was item No. 2A of the list of "fresh amendments" which was laid on the table on the 20th March (*see* p. 87 of the report of the proceedings of that day). Items 3A to 6A of the same list were taken immediately afterwards, as also the connected amendment No. 52 in the original List of Amendments, Annexure A. (See overleaf and on page 143.)

b) in the case of gift or exchange, a fee six times the annual rental of the tenure or portion thereof, as the case may be, or, if rent be not payable in respect of the tenure or portion, then a fee of rupees ten."

The motion was put and agreed to.

3A. The Hon'ble Mr. H. McPherson, with the permission of the President, moved that the following be substituted for clause 13 C(*3*), namely :—

"(*3*) If in any such case the landlord refuses to accept the requisite fee, the transferee or his successor in interest may deposit such fee with the Collector and, at the same time, apply for registration of the transfer. The Collector, after giving notice to the landlord to appear and be heard, shall decide whether the tenure is transferable by custom without the consent of the landlord, and whether the landlord has any good and sufficient reason to refuse his consent to the transfer; and, if the Collector finds that the tenure is so transferable and that the landlord has no good and sufficient reason to refuse his consent to the transfer, he shall cause the said fee to be delivered to the landlord in the prescribed manner, and shall, by an order in writing, declare that the transfer has been duly registered."

The motion was put and agreed to.

4A. The Hon'ble Mr. H. McPherson, with the permission of the President, moved that the *Explanation* to clause 13 C(*3*) be omitted.

The motion was put and agreed to.

New Clause 13 CC.

5A. The Hon'ble Mr. H. McPherson, with the permission of the President, moved that the following new clause be added after clause 13 C:—

He said:—

"Before I read out this new clause, I wish to point out that I intend to make a very slight modification in the drafting of it. For the word 'thereof' in line 5 I have been advised that it would be better to substitute the words 'of the tenure'; and for the words 'of the same' in the last line I am advised that the word 'thereof' should be substituted. This is purely a drafting modification.

"I will now read the amendment as thus revised:—

Effect of transfer of portion of a tenure.

"13 CC.—The transfer of a portion of a tenure and the registration of the same under section 13 A, 13 B or 13 C shall not be deemed to constitute a division of the tenure. The transferee of such portion and the holder of the remainder of the tenure shall be jointly and severally liable to the landlord for the rent of the entire tenure, unless the landlord has consented, in the manner specified in section 91, to a division of the tenure or to a distribution of the rent thereof."

The motion was put and agreed to.

[*Mr. H. McPherson; Maulvi Saiyid Muhammad Fakhr-ud-din.*]

New Clauses 13 D and 13 E.

62. The Hon'ble Mr. H. McPherson, with the permission of the President, then moved Amendment No. 62 on the main List of Amendments (Annexure A), which was to the effect that the following be inserted as clauses 13 D and 13 E, namely:—

"Fee on application under section 13 A, 13 B, 13 C or 25 A

"13 D. An application to the Collector under section 13 A, 13B, 13 C or 25 A shall be accompanied by such fee, in addition to the fee payable to the landlord, as the Local Government may, by rule, direct."

"Return of landlord's fee.

"13 E. If an application under section 13 A, 13 C or 25 A be disallowed, the Collector shall return the landlord's fee to the applicant."

He said:—

"The object of clause 13 D is that power may be given to recover the necessary costs that will be incurred on the hearing of applications, and issue of notices from the party who applies for registration. One beneficial effect of this will be that it will prevent bogus applicants from coming forward and worrying the Collector and landlord.

"The object of clause 13 E explains itself."

"I think there will be no opposition to these two additions."

The motion was put and agreed to.

Clause 6.

6 A. The Hon'ble Mr. H. McPherson, with the permission of the President, moved that the figures and letter "13 E" be substituted for the figures and letter "13 C" in line 5 of clause 6 (*1*) (*ii*) and in line 3 of clause 6 (*1*) (*iii*).

He said:—

"Clause 6 refers to the provision that *bajiaftdars* shall be deemed to be tenure-holders for the purpose of these transfer clauses. Clauses 13 A to 13 C were the original transfer clauses. By these new additions they become clauses 13 A to 13 E."

The motion was put and agreed to.

Clause 25A.‡

77. The Hon'ble Maulvi Saiyid Muhammad Fakhr-ud-din moved that clause 25A be omitted.

He said:—

"This clause is unknown in the Bengal Tenancy Act.* It is altogether a new provision. It was not included in the Bill itself, and the public have thus had no opportunity to offer their opinions with regard to it, nor were the opinions of the several associations ever asked on this clause. It appears that this clause 25A enacts something which is not known even in the Bengal Tenancy Act.* The present clause gives to the tenant the right of transfer of a portion of a holding, although under the provisions of the Bengal Tenancy Act,* section 88, a transfer of a portion of the holding without the consent of the landlord is invalid; yet, in the present clause, there is no provision to safeguard against the transfer of a portion of a holding without the consent of landlord: rather there is an express provision that tenants will be at liberty to transfer the entire holding or a portion thereof.

"The second objectionable feature of this clause is that the onus of proof of custom or usage has been thrown on the landlord. This is against the elementary principles of the provisions of the Indian Evidence Act.† In the Bengal Tenancy Act* there is section 183, and all such transfers of occupancy

* *i.e.*, Act VIII of 1885.

† *i.e.*, Act I of 1872.

‡ The consideration of this clause was postponed, at the meeting of March 20th, for consideration at the meeting of the following day (*see* page 106 of the proceedings of 20th March).

holdings are regulated by the provisions laid down in section 183. In the present Bill you have a parallel clause 246, and it would be much better to leave the transfer of holdings of occupancy-rights to be regulated by clause 246 of this Bill.

"Then, again, so far as the provisions of the Bengal Tenancy Act * are concerned, the onus has therein been thrown upon the transferer to show that the transfers are valid on account of there being a custom or usage of such transfers in the vicinity concerned; but in sub-clause (3) of clause 25 A we find that the landlord will have to prove a negative. He will have to prove that there is a custom by which he can refuse to recognize such a transfer. This is altogether a novel idea.

"My next objection with regard to this clause is that an appeal has been provided for to the Collector, from all orders passed by a subordinate officer, but no second appeal to the Commissioner has been allowed, although we find that a revisional power is given to the Commissioner under sub-clause (4) of clause 25 A. We are well aware of the virtues of such revisional jurisdiction in the hands of Commissioners! When they are reluctant to interfere with the findings of the Lower Court on appeal, how can we expect anything better in revision? Then, again, the parties have been given a right to go to the Civil Court, but a presumption of correctness has been provided to be given to the orders of the Collector. Now, the hands of the Civil Court ought not to be fettered in this way. The party who is aggrieved by the order of the Revenue Court, if he goes to the Civil Court, will have to establish his case, but why should you give a presumptive value to the order passed by the Revenue Court? I have just read the re-drafted clause as well, but I find that there is no provision therein guarding against the transfer of a portion of a holding, nor will it sufficiently meet all the objections which I have put forward before the Council.

"Then, again, so far as the onus of proof of custom or usage is concerned, the re-drafted clause is also not explicit. It leaves the matter in the dark, and there would be confusion hereafter as to whether, in such matters, the landlord or the transferee has to prove that there exists such a custom. These are my grounds for proposing this amendment No 77. With these words I move that clause 25A be omitted altogether."

The Hon'ble Rai Sheo Shankar Sahay Bahadur said:—

"I have an identical motion on the list of business, and with your permission, Sir, would like to support the motion of my Hon'ble friend, Maulvi Saiyid Muhammad Fakhr ud-din.

"This clause deals with the question of transfer of occupancy-rights. This is a subject, Sir, which has been discussed, considered and decided by eminent men from the time of the commencement of the British Government in this country. In the famous minute of Sir John Shore (afterwards Lord Teignmouth), dated 1789, attached to the Fifth Report of the Select Committee to the House of Commons, that authority laid down that the raiyats may acquire right of possession in the soil, but this right did not authorize them to transfer it, and it was so far distinct from a right of property. He, also, after fully considering the question as to whether the right of transfer should be given to the raiyats, thus concluded his observations:—

> "After weighing the above considerations, my opinion is that, were the raiyats alone to be considered, the privilege of transferring the lands held by permanent occupants should be vested in them. But as the zamindars and talukdars also claim consideration as their acknowledged rights would be infringed by conferring such privilege on the raiyats, and as this infringement does not seem essentially necessary for the ease and security of the latter, the privilege in question should not, I think, be given to the raiyats by the authority of Government, but allowed to be at any time voluntarily given or sold by the zamindars themselves."

"By the legislation that followed this famous minute no right of transfer was conceded to the occupancy-raiyats. Act X of 1859† also did not confer

* i.e., Act VIII of 1885.
† i.e., the Bengal Rent Act, 1859.

such a right. The matter again came up for consideration when a consolidated rent law for Bengal was taken up, and the Bill known as the Recovery Rent Bill was introduced into the Legislative Council of the Lieutenant Governor of Bengal on the 4th January, 1879. There was a provision in the Bill conferring such right on the tenants, as appears from the Proceedings of the Bengal Council, 1879 (pages 9 to 13). Sir Alexander Mackenzie strongly recommended this concession in favour of the raiyats. He said, 'We have, I say, every reason to believe that to recognize the transferable character of the occupancy-raiyat's tenure in Bengal will improve his position in many ways, and that he will in turn improve the land.' This innovation recommended by Sir Alexander Mackenzie was strongly opposed by the Hon'ble Rai Kristo Das Pal Bahadur, as appears from the Proceedings of Council (pages 15 to 27). Though this Bill was referred to a Select Committee (on the 11th January, 1879), it was subsequently decided that the whole law should be consolidated by an Act of the India Council, and the Tenancy Bill was introduced in the Council of Governor General on 2nd March, 1883) by the Hon'ble Mr. Ilbert. Under Mr. Ilbert's Bill the right of occupancy was transferable subject to certain rights reserved to the landlord. The Bill was referred to the Select Committee which, after mature and deliberate consideration, expunged this portion of the Bill. Sir Stuart Bayley, the Member in charge of the Bill,—himself a warm advocate of conferring this right of transfer on the raiyats,—in presenting the report of the Select Committee announced that an important change had been made in regard to the transferability of occupancy-rights, and that, instead of legalizing it and regulating it by law, it was to be left to custom, and added that 'the Council will not have to consider the schemes of pre-emption, registration and landlords' fees which occupied so much of the time and attention of the committee.' Sir, though the matter was abandoned by Government, the Hon'ble Mr Amir Ali moved, on the 5th March, 1885, an amendment similar to the provisions of the Bill now before you, to the effect that an occupancy-raiyat shall be entitled to transfer his holding, and that, where there is no custom of transfer, the landlord shall be entitled to a fee of 10 *per cent.* on the purchase money. The only difference between the Hon'ble Mr. Amir Ali's motion in 1885 and the present Bill is that the landlord under this Bill is to get 25 *per cent.*, instead of 10 *per cent.* as proposed by the Hon'ble Mr. Amir Ali. An interesting debate followed Mr. Amir Ali's proposal, and though some of the high officials freely gave out that, in their opinion, this right should have been conferred on the tenants, they refused to support the amendment. Some said that in the interests of the tenants themselves this right should not be conferred on them. His Honour the Lieutenant Governor of Bengal (Sir Rivers Thomson), who was himself strongly in favour of this right being conferred, concluded his speech by saying 'After much consideration, the safer view has prevailed that the introduction of any provisions like those which the Hon'ble Member has moved should not form part of our present legislation.' His Excellency the Viceroy (Lord Dufferin), in winding up the debate from his place in Council, made these observations; His Excellency said:—

> 'In the first place, we have to consider the matter from the point of view of right and equity. Sir John Shore, a contemporary authority upon the subject, has stated in the most positive manner that the occupancy-right does not include the right of sale or transfer, and the Courts of Bengal, as I understand, have maintained this view. It is, therefore, a question as to how far we should be justified in giving an occupancy-tenant a right carrying a money value to which he has not hitherto been entitled by law, etc, etc'

The matter was then dropped. Sir, I have pressed these details on the Council in order to show that this is a question which has been thoroughly discussed, sifted and settled. Some officers, like the Hon'ble Member in charge of the Bill, have held that this right should be conferred. Others, like the Hon'ble Mr. Maddox, have held that, in the interests of the tenants themselves, this right, if conferred, instead of proving a boon to them, will cause their ruin. Others again have held that the Crown has no right to confer on the tenant a right which he has never possessed, and to divest the landlord of a right which he has enjoyed and possessed ever so long. But, after thorough discussion

and mature consideration, they have all agreed, though by a different process of reasoning that the tenant has no such right except as a gift from his landlord or by long established custom and usage. This is the law laid down in the Bengal Tenancy Act.* One would have thought, Sir, that this question was concluded by authority and cannot be re-opened. Coming to recent legislation, the Chota Nagpur Tenancy Act† does not confer any such rights. With regard to the present legislation now before the Council, I find that the committee which sat at Cuttack to consider the matter was by a large majority opposed to this right being conferred on the tenants. The Hon'ble Mr. Janaki Nath Bose was opposed to it. The Hon'ble Member in charge of the Bill was, of course, for it. But the Hon'ble Mr. Maddox recommended that the law as laid down in the Bengal Tenancy Act* should be followed. I presume that the draft Bill, which was submitted to the Government of India, did not contain this new provision which has been added by the Select Committee. In any case, it was not in the Bill as introduced in Council. The Statement of Objects and Reasons, in paragraph 18 lays down, 'As regards raiyats, it is now proposed to decide the question on the basis of custom (clause 246), and thus to follow the provisions of section 183 of the Bengal Tenancy Act.'* It was only subsequent to the introducton of the Bill that the Hon'ble Mr. McPherson, in his letter of 30th November, 1911, to the Government, and in the speech which he delivered when submitting the Bill to the Select Committee, raised this question, not on any new facts since discovered by him, but on the old grounds. His grounds, so far as I have gathered, are shortly as follow:—

"*Firstly*, the Crown should, in his opinion, take powers to permit freedom of transfers of raiyati holdings and to fix a limit to the registration fee payable to the landlord.

"*Secondly*, numerous transfers having actually taken place, as appears from the settlement proceedings, in his opinion this was the most opportune time for laying down a general rule which will decide the question once for all.

"With regard to the right of the Crown to concede this right to the raiyats, all that I have to say is this, that if this concession had been entirely in the gift of the Crown, no one could have objected, although, as appears from his note, the Hon'ble Member in charge is himself doubtful if this concession will work to the benefit of the tenants; for, in paragraph 16 of his letter, he suggests that if this concession does not work well, this new provision might be subsequently repealed and all sales might be altogether prohibited. There are others who are of opinion that this will prove to be the extinction of the cultivating class. My submission, however, is that you have to consider the vested rights of the landlord. You cannot ignore that right. You do not propose to give anything which is entirely in your gift. You want to deprive the landlord of some privileges and give them to the tenant. Have you a right to do so? In the language of Lord Dufferin you have not.

"I now turn to the claim that the number of sales that are alleged to have taken place is a ground for this extraordinary measure. Granted that it is so. The point is not as to how many sales have taken place, and whether they are numerous or few, but whether the sales have been held without the consent of the landlord and have been held to be valid. If 75 *per cent.* of the holdings have been sold with the consent of the landlord, it will not and cannot be proved that there is a custom of sale without his consent. It has been held in various cases by the Hon'ble High Court that the essence of such a usage is that transfers made to the knowledge, though without the consent of, the landlord are valid and must be recognized by him (11 *Calcutta Weekly Notes*, page 83). I have searched in vain amongst the papers sent to us to see if any such position is maintained in Orissa. There are none.

"My submission is that no case is made out for changing the existing law, and that the innovation introduced by the Hon'ble Member in charge of the

* i.e., Act VIII of 1885.
† i.e., Bengal Act VI of 1908.

Bill after it was introduced into Council should be expunged. I, therefore, beg to support the motion now before the Council."

The Hon'ble BABU JANAKI NATH BOSE said:—

"Sir, I was opposed to the proposal of making occupancy-rights absolutely transferable. I am still opposed to that proposal, but then existing facts must be faced, and the law should be altered in such a way as to fit into the existing state of things. Sir, since the last revisional settlement, a very large number of transfers of occupancy-holdings has taken place and my friend, the Hon'ble Mr. Maddox, will be able to inform the Council as to the exact number of such transfers and the quantity of lands so transferred. This clause 25A leaves the law as it was under the Bengal Tenancy Act,* because, Sir, if in any local area a custom exists for making such transfers valid, the custom will have its way and the Collector will be bound to give effect to the custom. If, on the other hand, no such custom prevails, even if the transfer takes place, the mutation will not be allowed. It was observed that zamindars, in cases of such transfers, were levying fees varying from 10 to 15 *per cent.* of the consideration money to 50 *per cent.* and upwards, and in some of the zamindaris it was found that the levying of such fees almost amounted to blackmailing. The object of this clause is to legalize the realization of a reasonable fee by the landlord, and it was considered that 25 *per centum* of the consideration money would be a reasonable amount. On the other hand, the transferor and the transferee were to be given to understand what they were bound to pay under the law to the zamindar for making the transfer valid. This clause was not the result of a sudden idea. The Hon'ble Mover of the amendment will find that so late as 1908-1909, at the conference held by the Hon'ble Mr. Maddox at Cuttack with the representative gentlemen of the town, the matter was thoroughly discussed, and most of the zamindars agreed to accept 25 *per cent.* of the consideration money. I also notice that in the opinions submitted by some of the associations the matter is also discussed. So I do not think that it is fair to say that the Select Committee all of a sudden thought of the matter and enacted the present clause. The Hon'ble Mover of the amendment also says that the burden of proof will lie on the landlord. I think that is not a right view of the law. It is the transferee who is to apply to the Collector in case of refusal by the landlord, and the Collector will have to be satisfied that the holding was transferable by custom without the consent of the landlord. When such an issue is raised, it is incumbent on the applicant to prove this issue in his favour or, in other words, the onus or burden of proof is on him; and I think that the Hon'ble the Legal Remembrancer will support me in my view of the law, so that, Sir, you will notice that the law is left where it was under the Bengal Tenancy Act,* and that the matter will be regulated by the custom prevailing in a certain locality. In order to remove the difficulties which have been met with in Orissa during the last provincial settlement, and in order to legalize the realization of certain dues which are being demanded by, and paid to, the landlords, and also in order to make the matter clear to the transferees that such transfers are not valid without the consent of the landlord unless there be a custom to that effect in that locality, this clause was introduced, and that only after mature deliberation."

The Hon'ble BABU BRAJ KISHOR PRASAD said:—

"Sir, I rise to raise my voice against this amendment which has been proposed by the Hon'ble Rai Sheo Sankar Sahay Bahadur. I think that the provision embodied in clause 25A is one of the many wholesome principles which have been introduced in the Orissa Tenancy Bill, and the tenantry of Bihar look forward to the day when some such provision will be introduced into a Bihar Tenancy Act. I can speak from my personal experience and tell this house that the present state of the law makes the position of the tenant very deplorable, because all of us who have to work in the mufassal know that the

* *i.e.*, Act VIII of 1885

rulings of the Calcutta High Court have made it impossible to prove custom. Whenever any case, in which there is a transfer even by mortgage, comes to the Civil Court, the result is that the poor tenant or the transferee is dispossessed of the holding, and the general result is that the tenants are impoverished. Of course, I realize, Sir, that, according to the Indian Evidence Act,* the onus is upon the transferee to prove the existence of any custom, and that is the very obstacle which ought to be removed. As this provision removes that obstacle, I beg to support the clause as it stands. I would like to see the onus thrown upon the landlord to prove the existence of any custom which would entitle him not to recognize the transfer. With these words, I beg to support the clause as it stands, and to oppose the amendment proposed."

The Hon'ble RAI SITA NATH RAY BAHADUR said:—

"Sir, I wish to speak a few words in support of the amendment that clause 25A be omitted. My reasons are these:—I know that the practice has grown up everywhere in Bengal and Orissa of recognizing the transferability of an occupancy right where such transfer is recognized by custom or usage, and the zamindars give effect to such transfers by accepting a fee of 25 *per cent.* of the consideration money. But for the first time I learn from the remarks made by the Hon'ble Babu Janaki Nath Bose that, in Bengal, the practice prevails that zamindars are bound to recognize the transferability of a portion of an occupancy-holding. I think the practice nowhere prevails of compelling the zamindars to recognize the transferability of a portion of a holding. It is, therefore, an innovation, and as such would lead to complications and unpleasantness in the relations between the raiyat and the zamindar. It is also an innovation which is detrimental to the interests of the zamindar in that a portion of the occupancy-right will be allowed to be transferred, and the zamindar will be bound to recognize the transferability of a portion of a holding."

The Hon'ble MR. MADDOX said:—

"Sir, as the Hon'ble Rai Sheo Shankar Sahay Bahadur has referred to my opinion, I should like to say a few words. I regret that I cannot give the figures as the Hon'ble Babu Janaki Nath Bose asked me to do, but no doubt the Hon'ble Mr McPherson will supply them. I have studied these figures, and I can state how numerous the transfers are and how very universal the practice is in the three districts of Orissa. I may say that, when I left Orissa in 1899, I was opposed to this provision, and even up to 1905 I should have opposed this provision, but since then I have examined the mass of evidence collected, and I am satisfied that such a provision is necessary. The Hon'ble Rai Sheo Shankar Sahay Bahadur referred to the proceedings which led to the passing of the Bengal Tenancy Act† in the Supreme Council. I would ask him again to look at the words of the Lieutenant-Governor of that time. His Honour stated that compulsory provision of this kind did not come within the scope of the 'present' legislation ('present' was the word used by His Honour). I do not imagine from that remark that His Honour intended that legislation on this subject was to be precluded for ever in the future. My opinion now is that the Orissa raiyat is fit to enjoy this provision, and this is a provision which is of advantage both to the landlords as well as to the tenants and which will settle innumerable disputes. I therefore oppose the amendment."

The Hon'ble MR. H. MCPHERSON said:—

"Before the Council votes on this amendment I should like to refresh the minds of Hon'ble Members regarding the salient facts of the case. Revision operations have been going on for the last five years throughout the temporarily-settled estates of Orissa, and careful statistics have been kept by the officers of the Settlement Department regarding the extent to which transfers of occupancy-rights have occurred. These statistics show that, during the

* *i.e.*, Act I of 1872.
† *i.e.*, Act VIII of 1885.

past 10 or 12 years, no less than 140,000 acres of raiyati lands have changed hands for an aggregate consideration of 77 lakhs of rupees. On this an additional one-fourth, equal to nearly 20 lakhs, was paid by the transferees to the landlord as the price of the recognition of the transfers at the time when they were entered in the landlords' books. I may add that a considerable number of these transfers were brought to the notice of the landlord in the course of the present (by Mr. Das) much-abused revision settlement, and it was the confidence inspired by the presence of the attestation officer that led the parties to deal with one another and arrange for the recognition of numerous transfers that had up to that date not been brought to the notice of the landlord and received his recognition. When the landlords found that the revision operations were bringing this benefit in their train, they ceased to be hostile to the operations, and in fact welcomed them. It was at the time of recording these changes that the Settlement Officer found that the payment of one-fourth of the consideration money was practically the universal practice. Cases did come to his notice in which exacting landlords had demanded higher fees and refused to recognize a practice which had become the general usage, but those who asked for more than 25 *per cent.* were ashamed to own it when confronted by the Settlement Officer. Although it is a heavy fee, the raiyat is willing to pay it rather than lose the valued right of transfer. I have questioned influential landlords on the subject, and they all admit that one-fourth is the proper fee, and this is what we propose in section 25A to recognize as the usage in the areas where the custom of transfer has been found to exist. We have enumerated, in *Explanation II*, the nature of the objections which may be considered to be reasonable. It cannot be said that we are introducing something that is absolutely new, without any regard or respect for the landlord's wishes. The whole point of section 25A is that we are not introducing anything new or changing the provisions of the Bengal Tenancy Act.* The Bengal Tenancy Act* says that transfers shall be regulated by local custom or usage. We have found in the temporarily-settled estates of Orissa that a certain usage does exist, and we have incorporated this in clause 25A chiefly with the object of preventing the exaction of a larger fee than is recognized as fair by all the zamindars in Orissa to whom I have spoken on the subject.

"The statistics collected by the Settlement Department show that about three-fourths of the transfers have occurred amongst the raiyats themselves while one-eighth has been in favour of landlords and one-eighth in favour of *mahajans.*

"The safeguards provided in the Bill will tend to diminish the amount of transfer which occurs in favour of the last-named class.

"We have not at present any reason to fear that recognition of transfer will encourage improvidence amongst the cultivators. Cultivators are liable to be met by sudden calamities, as for example, the loss of plough cattle by disease. By the sale of half an acre a cultivator can meet such a calamity and, as soon as a good harvest comes, he re-purchases his half acre or buys somebody else's. Or if the calamity be overwhelming, he perhaps sells out altogether, sets off for Calcutta or elsewhere, takes up service, amasses a little money, and then, having made his little pile, returns to his native village and settles down again as a cultivator. I think that we ought not to place any obstacles in the way of this process which is so beneficial to the raiyat and is not injurious in any way to the interests of the landlord.

"A good deal has been said about the reference to a "portion" of a holding in clause 25 A. Now I want to explain to the Council that more than two-thirds of these transactions, extending over 12 years, and covering 140,000 acres, were sales of part holdings, and no distinction is made by landlords in actual practice in dealing with these part transfers. We have proposed to make no distinction in the Bill except that we have introduced certain safeguards against excessive subdivision. It would be a great mistake, in the circumstances of Orissa, not to allow the transferee and transferer to become separate in responsibility, once the transfer has been recognized. This is the universal practice, and I have never heard of any landlord who took

* *i.e.*, Act VIII of 1885.

[*Rai Baikuntha Nath Sen Bahadur.*]

his 25 *per cent.* and refused to allow the distribution of rent consequent on the transfer.

"We do not propose to extend the provisions of clause 25 A to the permanently-settled estates, because we have not sufficient information regarding the usage of transfer in these areas. We justify clause 25 A entirely on information which we have collected in the course of the revision settlement operations in Orissa. We cannot assign any similar or sufficient reason for extending the provisions to the permanently-settled area, and I have therefore, in the separate amendment which stands in my name, proposed that the clause shall not extend to the permanently-settled areas.

We have been told that the right of transfer did not exist in the year 1789. But that was 120 years ago, and we are not legislating now for 1789. We are legislating for the present day and for the future. We have also been told what was the position of the case at the time that the Bengal Tenancy Act* was under discussion, that is thirty years ago. We do know that at the time the Bengal Tenancy Act* was under discussion there was a very strong volume of opinion in favour of making all occupancy holdings transferable, and we also know from the correspondence and the discussions that took place then that the reason why no such provision was made in the Bengal Tenancy Act* was that there was lack of uniformity in the practice of transfer throughout the Province. There was a great deal of diversity of opinion as regards the conditions under which the practice should be recognized. It was impossible to lay down any rule based on uniform or universal usage, and therefore the question was held over. I have read the correspondence and I remember seeing a definite statement made by a previous Lieutenant-Governor of Bengal that if the practice of transfer ever became uniform, he would have no hesitation in recommending to the Government of India, and passing, a legislative enactment which would give a right of transfer in accordance with the practice that had become uniform. That is precisely what we want to do in the case of Orissa.

Attention has also been drawn by the Hon'ble Member to the fact that there is no such provision in the Chota Nagpur Tenancy Act,† but there again the situation is absolutely different. We know that in Chota Nagpur, as in the Sonthal Parganas, the great bulk of the cultivators are aborigines or semi-aborigines, who cannot be trusted to exercise the right of transfer without coming to grief, but there is no reason to believe that the exercise of this right, which is now being exercised as a matter of fact daily in Orissa, will cause disaster to the people of Orissa. The two cases do not stand on the same footing. Attention has been drawn to a remark made by me that if ever the recognition of transfer proved disastrous in Orissa, the time would then have come to interfere—either to repeal the section or to limit the right of transfer. I do not think that is an adequate argument against our recognizing the existing usage in the present Bill. It may possibly happen, though I think it is highly improbable, that, in the course of thirty years, we shall find lands drifting into the hands of money-lenders, and the situation may become such as to render necessary a re-consideration of the whole matter. But that is no reason why we should not act in the light of the information which we now possess, and acknowledge a usage which has become universal and which, in the opinion of all those who are acquainted with the facts, should be incorporated in the law."

The Hon'ble RAI BAIKUNTHA NATH SEN BAHADUR said:—

Sir, I beg to make a few observations with regard to the provisions in clause 25 A. This clause seeks to give facilities for transfer to all occupancy-holders. In the Bengal Tenancy Act* the matter, that is, the incidence of transferabilities, depends upon the question of custom or usage. It is no doubt, from one point of view, very desirable that occupancy-holdings should be made transferable. Considerable difficulty is felt by the agriculturists when their hands are tied, and when they cannot mortgage and sell their holdings in times of need. At the same time, to protect the interests of the landlords, the existing Tenancy Act* has made the question dependent upon the existence

* i.e., Act VIII of 1885.
† i.e., Bengal Act VI of 1908.

or otherwise of custom or usage. In Bengal, when there is a transfer, the landlords sue the transferee for ejectment, treating him as a trespasser. So far as my experience goes, in the generality of cases, the disputes are settled, and the landlord becomes content with receiving 25 *per cent.* of the consideration money and a little increase in rent also. In Bengal, however, the Tenancy Act* does not contemplate the transfer of a portion of an occupancy-holding. This is an innovation. In the Bill, not only is the transferability sought to be given to the sale of one integral portion of the occupancy-holding, but it also seeks to give that incidence to a portion of an occupancy-holding. The Bill is defective in one respect. One-sixth of an occupancy-holding would be a portion of a holding, and if a holding consists of 20 bighas of land, 3 bighas of land might be sold. In practice I have noticed in hundreds of cases that a tenant who has a holding, say of 12 bighas of land, sells 2 bighas in one case, and 2 bighas in another case: he sells 5 bighas to a person, fixing an imaginary rent for the same generally proportionate to the rent payable for the entire holding. When such a case comes before the landlord in Bengal, even if he be so disposed as to recognize the transfer, there arises the difficulty as to whether the rent which has been fixed as among themselves by the vendor or vendee is adequate for the land that is sold. A holding consisting of 12 bighas of land contains first class, second class, third class and fourth class lands, and the zamindar does not know what to do; he has to make an inquiry for himself in the presence of the vendor and the vendee and then come to terms. Now, as the Bill stands, an occupancy-holder might sell one-fourth, one-third, one-sixth or one-eighth of a holding, or he might sell a few bighas of land forming, as it were, component parts of the entire holding, and this would give rise to difficulty. No doubt the Government intends to make by this provision a certain provision regarding transferability: well and good. But let it be confined for the present to the entire holding. Any attempt to legalize transfer of a portion of a holding would give rise to difficulties and complications which would give rise to litigation, and I submit that ought to be avoided. I do not wish to take up the time of the Council with further observations than I have put forward, and I would ask the Hon'ble Member, in charge, and in fact the Council, to consider this aspect of the case."

The Hon'ble MR KERR said:—

"Sir, after the very interesting speech of the Hon'ble Rai Baikuntha Nath Sen Bahadur, I ought to explain to the Council what the provisions are with regard to the transfer of occupancy-holdings. I understand the Hon'ble Member would have no objection to these provisions provided they were confined to complete holdings. His objection is that the time is premature to put them in force with regard to part holdings. With regard to the practical aspect of the case, transfers of part holdings do take place in Orissa, and it is especially for those that we want to provide. But the Hon'ble Member will see that in *Explanation II* (*iii*), one of the points to which the Collector shall have regard in considering whether he should give his consent to the transfer,—that is to say, whether he should make the landlord give his consent to the transfer—is whether the transfer results in the creation of unreasonably small holdings; and then, again, in clause 91 it is laid down that the division of a tenure or holding or distribution of the rent payable in respect thereof shall not be binding on the landlord unless it is made with his express consent in writing or with that of his agent duly authorized in that behalf. I submit, Sir, therefore, that we have made ample provision for the protection of transfer of part holdings from abuse, and that the Council need have no hesitation in passing this clause, 25 A, on account of any apprehension that it might go too far as regards part holdings.

The Hon'ble MAULVI SAIYID MUHAMMAD FAKHR UD-DIN said:—

"Your Honour, I raised two or three points in connection with clause 25 A. My Hon'ble friend, Babu Janaki Nath Bose, seems to think that clause 25 A, as it stands at present,—of course I do not refer to the re-drafted clause 25 A—will throw the onus of proving custom upon the tenant or upon the transferee. He

* i.e., Act VIII of 1885.

[*Mr. H. McPherson; Maulvi Saiyid Muhammad Fakhr-ud-din; the President; Mr. Chapman.*]

wanted to refer this matter to the Legal Remembrancer, but I submit, Sir, that no reference is necessary. If the Members of the Council were to read two or three lines, they would be fully convinced that the sentence, as it stands at present in sub clause (3), throws the onus upon the landlord. It is not the tranferee who is to prove the validity of his transfer; it is the landlord who is required to prove the custom by which he can refuse to recognize the transfer. In sub-clause (3) the sentence runs thus:—"The Collector, after giving notice to the landlord to appear and be heard, shall thereupon inquire and decide whether the landlord is entitled by custom, or for any other good and sufficient reason, to refuse his consent to a transfer." Now there cannot be any room for doubt that the sentence, as it reads in this sub-clause, throws the onus upon the landlord and not upon the tenant. As I have submitted before, in the re-drafted clause 25A, this matter has been left in the dark, and will probably be a bone of contention hereafter, that is, as to whether the onus is, in the peculiar circumstances of the case, upon the tenant or upon the landlord. But we are now considering clause 25A as it stands in the Bill; we are not considering the re-drafted clause 25A; and therefore I think my learned friend's argument that the sentence, as it stands, throws the onus upon the tenant or upon the transferee is not correct or sound."

The Hon'ble MR. MCPHERSON said:—

"May I suggest that it would be preferable if we considered the present re-draft rather than the clause as it came from Select Committee, for that is the provision which Government mean to ask the Council to accept? The original draft 25 A is not relied upon by Government at all.

The Hon'ble MAULVI SAIYID MUHAMMAD FAKHR-UD-DIN said:—

"The re-draft may be considered after this clause is considered."

The PRESIDENT said:—

"The re-draft is not as yet formally before the Council."

The Hon'ble MR. CHAPMAN said:—

"But the re-draft is perfectly clear on the point of onus which the Hon'ble Member is labouring; the original clause only is obscure."

The PRESIDENT said:—

"I do not think the Hon'ble Member need waste time over the original clause, because the amended clause is that which is going to be proposed."

The Hon'ble MAULVI SAIYID MUHAMMAD FAKHR-UD-DIN said:—

"Very well, Sir. With regard to the re-drafted clause 25A, I submitted before that there is no safeguard therein against the transfer of portions of the holding. I have heard just now from the Hon'ble Mr. Maddox and the Hon'ble Mr. McPherson that, in the majority of cases in Orissa, portions of holdings are transferred, and that therefore there is a presumption of usage in this respect. I submit that the Hon'ble gentlemen have failed to consider the underlying principle of custom or usage, or whether transfers which take place without the landlords' consent, but with their knowledge and without any successful opposition on their behalf, will go to establish usage or custom. If, in Orissa, portions of holdings have been transferred with the knowledge and consent of the landlords, that would not raise a presumption of any usage. If, the landlord has recognized such transfers on taking a *salami*, say 25 *per cent.*, of the consideration money or something like that, "that recognition would not establish usage or custom. Again, custom requires the establishment of transfers from time immemorial. I submit, Sir, that clause 25A, as it stands, will be most injurious, and I further submit, Sir, that even the re-drafted clause 25 A does not meet all my objections and that that clause even should not be adopted."

The motion was then put and lost.

[*Rai Sheo Shankar Sahay Bahadur; Raja Rajendra Narayan Bhanja Deo.*]

The following motions were, by leave of the President, withdrawn:—

78. The Hon'ble Rai Sheo Shankar Sahay Bahadur to move that clause 25A be omitted.

79. The Hon'ble Raja Rajendra Narayan Bhanja Deo to move that clause 25 A be omitted.

80. If motion No. 78 be not carried, the Hon'ble Rai Sheo Shankar Sahay Bahadur to move that for clause 25 A the following be substituted, namely:—

"Transfer of occupancy-holding by sale, gift or exchange.

25A. "(*1*) Every transfer by sale, gift or exchange of any occupancy-holding or a portion of a holding shall be invalid unless made with the consent of the landlord, or unless where there is a custom, usage or customary right of such transfer, without the consent of the landlord on payment of a fee being made to him.

"(*2*) When any occupancy-holding or portion of a holding is so transferred with or without the consent of the landlord, as aforesaid, the landlord, on registration of the transfer in his office, shall be entitled to levy a maximum registration fee as follows, namely:—

(*a*) In the case of a sale, a sum equal to 25 *per cent.* of the market value, or to six times the annual rent of the holding or portion thereof, whichever is greater:

Provided that,

(*i*) until sufficient reason to the contrary is shown, the market value shall be deemed to be the consideration money as shown in the deed or document effecting the transfer, or, where there is no such deed or document, the consideration money actually paid for the transfer; and

(*ii*) in case the rent is paid in kind and is fluctuating, the average yield to the landlord during five agricultural years preceding the sale shall, for the purposes of this section, be taken as the annual rental of the holding or portion thereof.

(*b*) In the case of gift or exchange, a sum equal to six times the annual rental of the holding or portion thereof:

Provided that, in case the rent is paid in kind and is fluctuating, the average yield to the landlord during five agricultural years preceding the sale shall, for the purposes of this section, be taken as the annual rental of the holding or portion thereof.

"(*3*) If, in any case, the landlord accepts the fee authorized by sub-section (*2*), his consent to the transfer shall be deemed to have been given.

"(*4*) If, in any case, a dispute arises between the transferee and the landlord, either with regard to the validity of the transfer or with regard to the fee payable for such transfer, the landlord or the transferee shall apply to the Collector who shall inquire into and decide the same.

"(*5*) Nothing in this section shall affect the right of either party to bring a suit in the civil court to contest the correctness of the finding of the Collector with regard to the validity or otherwise of the transfer, and, subject as above and to any appeal or revision as provided for in this Act, the order of the Collector under this section shall be final.

"(*6*) If, notwithstanding the order of the Collector to the contrary, the landlord refuses to accept the requisite fee, the transferee may deposit such fee with the Collector, who shall cause the said fee to be delivered to the landlord in the prescribed manner, and shall, by an order in writing, declare that the transfer has been duly registered.

[*Babu Hrishikesh Laha; Mr. Saiyid Wasi Ahmad; Raja Rajendra Narayan Bhanja Deo; Mr. H. McPherson; Mr. M. S. Das.*]

"(7) Nothing in this section shall be construed to authorize a division of a tenure or distribution of the rent payable in respect thereof unless it is made with the express consent in writing of the landlord or his agent duly authorized in this behalf."

The following motions were, by leave of the President, withdrawn:—

81. The Hon'ble Babu Hrishikesh Laha to move that the words "with the consent of the landlord or according to custom" be inserted after the word "exchange" in line 2 of clause 25 A (*1*).

82. The Hon'ble Mr. Saiyid Wasi Ahmad to move that the words "or portion of a holding" in lines 1 and 2 of clause 25 A (*1*) be omitted.

83. If motion No. 79 be not carried, the Hon'ble Raja Rajendra Narayan Bhanja Deo to move that the words "or portion of a holding" in lines 1 and 2 of clause 25 A (*1*) be omitted.

84. The Hon'ble Raja Rajendra Narayan Bhanja Deo moved that the words "within six months from the date of transfer" be inserted before the words "to the landlord" in line 3 of clause 25 A (*1*).

He said:—

"There is no provision in clause 25 A to expedite transfers, and it is necessary that a transfer should be registered in the presence of the landlord as soon as possible; I think indeed that is the intention of the Hon'ble Member in charge. So I propose that these words be added."

The Hon'ble MR. H. MCPHERSON said:—

"Sir, I oppose this amendment because I do not think it would do any good. I am just as anxious as the Hon'ble Mover that these transfers should be recorded as soon as possible. But would the mere putting in of the words "within six months from the date of transfer" effect this object? Their effect would rather be to deter people who have not come forward within six months from coming forward later. We are dealing with ignorant raiyats who do not know the law very well, and if the transfer does come to notice more than six months after the transaction, why should we prevent the transferee from paying the fee to the landlord and getting the transfer formally recognized? I do not think that this amendment would do any practical good. I therefore oppose it."

The motion was, then, by leave of the President, withdrawn.

The following motions were, by leave of the President, withdrawn:—

85. If motion No. 83 be carried, the Hon'ble Raja Rajendra Narayan Bhanja Deo to move that the words "or portion" in line 4 and the words "or portion thereof" in lines 9 and 10, 12 and 13 in clause 25 A (*1*) be omitted.

86. The Hon'ble Babu Hrishikesh Laha to move that the words "market value" be substituted for the words "consideration money" in line 2 of clause 25A (*1*) (*a*).

87. The Hon'ble Mr. M. S. Das moved that the following be substituted for clause 25 A (*3*), namely:—

(*3*) "If the landlord demands a higher fee than that prescribed in clauses (*1*) (*a*) and (*1*) (*b*) of this section, the transferee or his successor in interest may apply to the Collector. The Collector, after notice to the landlord, shall (?) make a summary inquiry. If the Collector is satisfied that the complaint is true, he shall inflict a fine on the landlord not exceeding twice the excess fee demanded. If the Collector finds that the complaint is false, he shall direct the applicant to pay all legitimate costs incurred by the landlord during the summary inquiry."

He said:—

"Sir, first of all I shall ask the Hon'ble Member in charge of the Bill to be a little indulgent to me and allow me to make a slight alteration in the amendment so as to include also sub-clauses (4) and (5). It was, it seems, an oversight on my part or my typewriter's mistake."

The Hon'ble MR. H. MCPHERSON said:—

"Sub-clauses (4) and (5) are now proposed to be cut out altogether, as reference to my re-draft of clause 25A will show."

The Hon'ble MR. DAS said:—

"Sir, I have very carefully, and with much interest, listened to the many speeches which have been made regarding the condition of the raiyat and what can be done to help him. Unfortunately the raiyat is not here—the raiyat is not to be found anywhere in this hall, and all of us say that we are his representatives. So also, one sees an agent of a Gorakshini Sabha, with a picture of the cow, going about collecting funds to save cattle from slaughter; you see also the bull in a picture of Bovril; and, in the same way, everybody thinks he can represent the raiyat. I do not say that I am a representative of the raiyat; I wish I were. I should certainly feel a greater pride in occupying this seat here, and I would not mind standing at the farthest point of this hall so long as I could say fitly that I represented the poor raiyat. Sir, I have mixed with him; I have made my feeble attempts, unsuccessfully, I must say, to improve his condition. Now, the question that has been put before us is that of transferabilty. I have read the suggested clause, and, when I go through its cumbrous provisions, and see the different stages at which the landlord may oppose the raiyat, I ask, what does all this 'ability' amount to? The clause adds to the ability of opposition, but certainly not to the ability of transfer. The most unfortunate circumstance in connection with this question is that it is not possible for us to place ourselves in the poor raiyat's position when he is on the verge of starvation and wants to sell a plot of his holding. Perhaps the floods have come, starvation stares him and his family in the face, his house has been washed away, and then he wants to sell a portion of his holding in order to leave his family there in his village and to go to some place to work as a coolie, and he wants his railway fare; that is the time when he wants to sell his holding. Now, none of us can place ourselves in that position and realize the pinch of necessity which afflicts him at that particular time. Sir, everyone—many at least—can play Hamlet's ghost on the stage; but does anybody realize the feelings of Hamlet's ghost? It is necessary for one to die like Hamlet, be buried, and then come out of his grave, before he can know what the feelings of Hamlet's ghost were. So it is not possible for us to realize the raiyat's position. He wants to sell his land; he wants to go away at once; and I ask you, are you improving his position by inserting all these clauses here which enable the zamindar to say that the raiyat is a bad man and to raise all these objections? The transferee buys, and the zamindar bargains with him; if the zamindar bargains for a thief, let him have a thief; but let the poor raiyat who wants to have a little cash have facilities. This clause only puts stumbling-blocks in his way.

"Now the Hon'ble Mr. H. McPherson says—I have taken down his words—'that we do not want to increase litigation by suggesting means of litigation' But what becomes of the poor raiyat when you put in all these reservations?—In every instance the zamindar can oppose. Now the thing is this: the zamindar, no doubt, has a right to the land, but we must remember the raiyat's share in it also; he it is who has brought the land to a better condition, and we all know the old couplet—

When Adam delved and Eve span,
Where was then the gentleman?

[*Mr. Maddox ; Mr. M. S. Das ; Mr. H. McPherson ; the President.*]

Who brought the land under cultivation, who worked on the land which was lying waste at the last settlement? The raiyat. The Government reaps the benefit of the cultivation; the zamindar reaps the benefit of the cultivation; is the raiyat to reap nothing?"

The Hon'ble MR. MADDOX said:—

"I rise to a point of order. It is not the landlord's position we are discussing, but the demand by a landlord for higher fees. Have the Hon'ble Mr. Das' remarks anything to do with amendment No. 87 or the demand of the landlord for higher fees?"

The Hon'ble MR. DAS said:—

"All that I mean by bringing forward these explanations is to consider whether the landlord has got a sufficient case for refusing his consent to the transfer."

The Hon'ble MR. H. MCPHERSON said:—

"I think, Sir, that the Hon'ble Mr. Das is in order. What he suggests is that this amendment of his should be substituted for the whole of sub-clause (3), including the *Explanations*. He can, therefore, discuss the *Explanations*."

The PRESIDENT said:—

"The Hon'ble Member is in order in discussing the various grounds on which he wishes to have sub-clause (3) removed. You are quite in order, Mr. Das."

The Hon'ble MR. DAS continued:—

"All these restrictions must be removed if you want to give the raiyat real facility of transfer. I do not want to disturb the right of the zamindar. It is settled that he should have 25 *per cent.* of the consideration money. The remedy is not sought for all cases. The Hon'ble Mr. H. McPherson says that, in most cases, the zamindar receives 25 *per cent.*, and that it is only a few grabbing zamindars whose cases require special legislation. Very good. Then who ought to be punished? These grabbing men ought to be punished. The majority of zamindars are good; they allow the transfers. I am talking only of Orissa. I have no right to talk of Bihar or Bengal; in Orissa the majority of zamindars are willing; they allow the raiyat to transfer. Very good. Then there are only a few who don't, and what is the evil? These few want more than 25 *per cent.* Very good. I say, if they want more than 25 *per cent.*, punish these unscrupulous zamindars. As soon as a zamindar demands more the raiyat goes to the Collector and says—"the law authorizes 25 *per cent.* and this man wants from me 50 *per cent.*;" and the Collector inquires and says to the zamindar—'you wanted 25 rupees more, you will have to pay a fine of 50 rupees.' This he assesses in a summary way.

"The zamindar, if he is a good man, will take 25 *per cent.*; if he is a bad man, he will want more than 25 *per cent.*, and the transferee, by some means, will have to make it up with the zamindar. Now, the zamindar knows that he has got all this power of resistance, and that he can object on such and such grounds; so he says to the transferee,—'If you go to the Collector; I will go to the Civil Court; I will take the matter to the highest Court, and you can calculate the cost of litigating with me. Instead of that, I suggest that you pay half of that amount to me.' That is what will be done under the provisions of the Bill. Under my proposal all these dangers will be removed."

[*Maharajadhiraja Bahadur of Burdwan; Mr. H. McPherson; Mr. M. S. Das.*]

The Hon'ble SIR BIJAY CHAND MAHTAB, MAHARAJADHIRAJA BAHADUR OF BURDWAN, said:—

"I am sorry I have to oppose this amendment on the ground that, if we look at clause 25 A (*3*), we find that this has been inserted to safeguard certain customs that may exist. The point that the Hon'ble Mr. Das has in view is that there are landlords in Orissa—he does not speak very highly of Orissa—who will oppress the raiyats, but the landlords' legal safeguard will be that he may appear and be heard, etc., and the Collector may, 'for any good and sufficient reason, refuse his consent to the transfer.' Why, then, need the zamindar be unnecessarily oppressive?"

"But if the landlord's reason is not a good and sufficient reason, the Collector will certainly override his objection, and the raiyat will get fair play. I do not see, therefore, why the Hon'ble Mr. Das in this amendment should have brought in all sorts of terms, including 'Hamlet's ghost,' and 'Adam's fig-leaf.'"

The Hon'ble MR. H. MCPHERSON said:—

"I admit that in this matter I have a certain amount of sneaking sympathy with the Hon'ble Mr. Das. What he apparently wants to have inserted in the Bill is that all occupancy-rights are transferable, that zamindars are entitled to be paid a fee of 25 *per cent.*, and that if they ask for more than 25 *per cent.*, the raiyat may go to the Collector and get a penalty out of his landlord equal to double the amount of the excess demand. That may be a very desirable position, but what we have to consider is the question of practical politics. Even with all these safeguards that we have included in our clause 25 A—safeguards in the interests of the zamindars—there has been a considerable amount of opposition to our proposals. If we had put forward propositions such as the Hon'ble Mr. Das has suggested, we should have had all the zamindars of Bengal, Bihar and Orissa on the top of us, and there would have been no chance whatever of carrying our proposals. I do not see that his proposal is a practical one in the present state of affairs, and I do not see how we can possibly accept his amendment at this stage of the discussion. The Hon'ble Mr. Das, I may remark, himself threw out as a general accusation against the Bill that we had ransacked all the laws of India in order to find repressive legislation to utilize against the peaceful Uriyas. This little addition to the penal clauses of the Bill now proposed by him does not seem to accord with that accusation or with his general attitude towards the Bill. I must oppose this amendment. I may also remark, with reference to Mr. Das' 'Hamlet's ghost,' that, so far as I remember, the ghost in the play was that of Hamlet's father, and not of the Prince himself. Possibly the Hon'ble Member's enthusiasm has, for once, betrayed him into a false reference, and I confess that I do not exactly appreciate the relevance of 'Adam' and 'Eve' in this discussion."

The Hon'ble MR. DAS said:—

"I do not look upon this clause as a penal clause. I may have made a remark to that effect, but what I really meant, as I shall perhaps show hereafter, is that the Bill gives us the character of being perhaps the most turbulent people under Your Honour's Government. I do not like to say a word about the zamindars of Bihar or Bengal. I do not know them, and perhaps there are many very kind or very good landlords amongst them; at any rate, most of our zamindars are good enough, and what I say is, do not throw the apple of discord amongst them and their tenants. If they can settle matters between themselves, let them do so. If a raiyat dances attendance on a zamindar and works a little for him, he may thereby get his fee or a portion of his fee taken off. But if he sues him in Court, he finds a formidable enemy, and I would rather not hear 'the song of the dying swan' from the raiyat.

"If the Hon'ble Mr. H. McPherson has sympathy with my views, I expect him to take his courage in both hands and support me."

[*Mr. M. S. Das.*]

A division was then taken, with the following result:—

Ayes—4.

The Hon'ble Babu Bhupendra Nath Basu.
" Raja Rajendra Narayan Bhanja Deo.
" Mr. Das.
" Babu Braj Kishor Prasad.

Noes—36.

The Hon'ble Mr Slacke.
" Raja Kisori Lal Goswami.
" Mr. Greer.
" Mr. D. J. Macpherson.
" Mr. Collin.
" Mr. Stevenson-Moore.
" Mr Chapman.
" Mr Finnimore.
" Mr. Kerr
" Mr. Stephenson.
" Mr. Maddox.
" Mr. Kuehler.
" Mr. Morshead.
" Sir Frederick Looh Halliday, Kt
" Mr. Cumming.
" Mr. Bompas.
" Mr. Oldham.
" Mr H McPherson.
" Babu Janaki Nath Bose.
" Maharaja Bahadur Sir Prodyot Kumar Tagore, Kt.
" Sir Frederick George Dumayne, Kt.
" Rai Sita Nath Ray Bahadur.
" Lt.-Col. G. Grant-Gordon
" Sir Bijay Chand Mahtab, Maharajadhiraja Bahadur of Burdwan.
" Babu Kritanand Sinha
" Mr. Apcar.
" Mr. Stewart.
" Mr. Golam Hossain Cassim Ariff.
" Mr. Saiyid Wasi Ahmad.
" Maulvi Saiyid Muhammad Fakhruddin.
" Babu Hrishikesh Laha
" Maulvi Saiyid Zahiruddin.
" Mr. Reid.
" Rai Sheo Shankar Sahay Bahadur.
" Rai Baikuntha Nath Sen Bahadur.
" Khan Bahadur Maulvi Sarfaraz Husain Khan.

The following members were absent:—

The Hon'ble Mr. Mitra.
" Kumar Sheo Nandan Prasad Singh.
" Maharaja Manindra Chandra Nandi.
" Maharaj-Kumar Gopal Saran Narayan Singh
" Babu Deba Prasad Sarbadhikari.
" Mr. Norman McLeod.

[*Raja Rajendra Narayan Bhanja Deo; Babu Hrishikesh Laha.*]

The Hon'ble Dr. Abdullah-ul-Mamun Suhrawardy
" Mr. Dutt.
" Babu Mahendra Nath Ray.
" Mr. Dip Narayan Singh.
" Babu Bal Krishna Sahay.

The result of the division was *ayes* 4, *noes* 36, and the motion was therefore lost.

The following 14 motions were then, by leave of the President, withdrawn :*—

88. If motion No. 79 be not carried, the Hon'ble Raja Rajendra Narayan Bhanja Deo to move that the words "whether the holding or portion thereof is transferable by custom without the consent of the landlord or whether the landlord has" be substituted for the words "whether the landlord is entitled by custom or for" in line 6 of clause 25A (*3*).

89. The Hon'ble Babu Hrishikesh Laha to move the following amendments to clause 25A (*3*)—

(*i*) the words "transferee or his successor" be substituted for the word "landlord" in line 6;

(*ii*) the words "or for any other good and sufficient reason" in lines 6 and 7 be omitted; and

(*iii*) the words "to obtain a registration of the transfer of the holding or a portion thereof" be substituted for the words "to refuse his consent to the transfer" in line 7.

The whole sentence, therefore, to read as follows —

"The Collector, after giving notice to the landlord to appear and be heard, shall thereupon inquire and decide whether the transferee or his successor in interest is entitled by custom to obtain a registration of the transfer of the holding or a portion thereof, and if the Collector finds that the holding is so transferable, etc."

90. If motion No. 79 be not carried, the Hon'ble Raja Rajendra Narayan Bhanja Deo to move that the words "and any arrears due for the holding" be inserted after the words "cause the said fee" in line 10 of clause 25A (*3*).

91. If motion No. 79 be not carried, the Hon'ble Raja Rajendra Narayan Bhanja Deo to move that the following proviso be added at the end of clause 25 A (*5*), namely :—

"Provided that no such application shall be admitted by the Collector if it is made after six months from the date of the landlord's refusal."

92. If motion No. 89 be carried, the Hon'ble Babu Hrishikesh Laha to move that Explanation I to clause 25A (*3*) be omitted.

93. If motion No. 79 be not carried, the Hon'ble Raja Rajendra Narayan Bhanja Deo to move that Explanation I to clause 25A (*3*) be omitted.

94. If motions Nos. 79 and 93 be not carried, the Hon'ble Raja Rajendra Narayan Bhanja Deo to move that the words "that the holding is transferable by custom" be substituted for the words "that he is entitled by custom to refuse his consent to the recognition of transfers in individual cases" in lines 3 to 5 of Explanation I to clause 25A (*3*).

* *See*, in this connection, the second foot-note on p. 138.

[*Raja Rajendra Narayan Bhanja Deo; Mr. Saiyid Wasi Ahmad; Babu Hrishikesh Laha; Maharajadhiraja Bahadur of Burdwan; Mr. H. McPherson.*]

95. If motion No. 79 be not carried, the Hon'ble Raja Rajendra Narayan Bhanja Deo to move that the following be substituted for Explanation II to clause 25A (*3*), namely:—

"*Explanation II.*—The following shall be considered good and sufficient reasons for the landlord's refusal to give consent—

"(*i*) that the transferee is a non-agriculturist or a professional money-lender;

"(*ii*) that the transferee does not reside within, or in the vicinity of, the village in which the holding is situated;

"(*iii*) that the transfer does not result in the creation of unreasonably small holdings; and

"(*iv*) that the transferee is a habitual defaulter of rent or a person who, for any other reasonable cause, should not be made a tenant of the landlord without his consent."

96. If motion No. 83 be carried, the Hon'ble Raja Rajendra Narayan Bhanja Deo to move that Explanation II (*iii*) be omitted.

97. The Hon'ble Mr. Saiyid Wasi Ahmad to move that the words "is in respect of a portion of a holding" be substituted for the words "results in the creation of unreasonably small holdings" in Explanation II (*iii*) to clause 25A (*3*).

98. The Hon'ble Babu Hrishikesh Laha to move that the words "provided that the Court shall presume such finding to be correct until the contrary is proved" in lines 3 and 4 of clause 25A (*5*) be omitted.

99. The Hon'ble Mr. Saiyid Wasi Ahmad to move that the words "provided that the Court shall presume such finding to be correct until the contrary is proved" in lines 3 and 4 of clause 25A (*5*) be omitted.

100. If motion No. 79 be not carried, the Hon'ble Raja Rajendra Narayan Bhanja Deo to move that the words "provided that the Court shall presume such finding to be correct until the contrary is proved" in lines 3 and 4 of clause 25A (*5*) be omitted.

101. The Hon'ble Sir Bijay Chand Mahtab, Maharajadhiraja Bahadur of Burdwan, to move that for sub-clause (*7*) of clause 25A the following be substituted, *viz.*,—

"(*7*) Nothing in this section shall affect the right of any party to institute a Civil suit on any matter decided by the Collector under this section."

*7A. The Hon'ble Mr. H. McPherson, with the permission of the President, then moved that for sub-clause (*3*) and Explanation I thereto of clause 25 A the following be substituted, namely:—

"(*3*) If, in any such case, the landlord refuses to accept the requisite fee, the transferee or his successor-in-interest may deposit such fee with the Collector, and, at the same time, apply for registration of the transfer. The Collector, after giving notice to the landlord to appear and be heard, shall decide whether the holding is transferable by custom without the consent of the landlord and whether the landlord has any good and sufficient reason to refuse his consent to the transfer; and if the Collector finds that the holding is so transferable, and that the landlord has no good and sufficient reason to refuse his consent to the transfer, he shall cause the said fee to be delivered to the landlord in the prescribed manner, and shall, by an order in writing, declare that the transfer has been duly registered.

* This amendment was taken from the list of "fresh amendments" which was laid on the table at the meeting of the 20th March (see the second foot-note on p. 57 of the proceedings of 20th March).

[*Mr. H. McPherson; Mr. M. S. Das; Raja Rajendra Narayan Bhanja Deo.*]

Explanation I.—The fact that the landlord is in the habit of charging fees on the registration of transfers of holdings shall not by itself be taken as proof that the holding is not transferable by custom without the consent of the landlord."

The motion was put and agreed to.

†8 A. The Hon'ble Mr. H. McPherson, with the permission of the President, moved that sub-clauses (4) and (5) of clause 25 A be omitted.

The motion was put and agreed to.

†9 A. The Hon'ble Mr. H. McPherson, with the permission of the President, moved that the following sub clause, to be numbered (4), be added at the end of clause 25 A, as amended in Council, namely:—

"(4) Nothing in this section shall apply to the transfer of an occupancy-holding in a permanently-settled estate."

The motion was put and agreed to.

Clause 246.

†15 A. The Hon'ble Mr. H. McPherson, with the permission of the President, moved that the following new illustration be added after illustration (1*a*) to clause 246, namely:—

"(1*aa*) A usage under which a raiyat in a permanently-settled estate is entitled to sell his holding without the consent of his landlord is not inconsistent with, and is not expressly or by necessary implication modified or abolished by, the provisions of this Act. That usage, accordingly, wherever it may exist, will not be affected by this Act."

He said:—

"This is a consequential amendment to No. 9 A. The illustration, as it stands in the Bengal Tenancy Act,* was included in the original draft of the Bill. It was removed from the Bill when it was proposed to make clause 25 A generally applicable. Now that clause 25 A has been made inapplicable to permanently-settled estates it is necessary to restore the illustration, so far as permanently-settled estates are concerned."

The motion was put and agreed to.

The following motions were, by leave of the President, withdrawn:—

Clause 59.

128. The Hon'ble Mr. M. S. Das to move that the word "raiyat" be inserted after the word "*kijaytidor*" in lines 1 and 4 in the proviso to clause 59.

Clause 52.

129. The Hon'ble Raja Rajendra Narayan Bhanja Deo to move that the words "in a permanently-settled area" in lines 1 and 2 of clause 52 (1) be omitted.

130. If motion No. 129 be carried, the Hon'ble Raja Rajendra Narayan Bhanja Deo to move that the words "situated in a permanently-settled area" in lines 3 and 4 of clause 52 (2) be omitted.

---

* Act VIII of 1885.

† This amendment was taken from the list of "fresh amendments" which was laid on the table at the meeting of the 20th March (see the second foot-note on p. 87 of the proceedings of 20th March).

[*Raja Rajendra Narayan Bhanja Deo : Mr. M. S. Das ; the President.*]

Clause 54A.

131. The Hon'ble Raja Rajendra Narayan Bhanja Deo moved that clause 54A be omitted.

He said :—

"This is a new measure in regard to waste lands, and has been taken from the Chota Nagpur Tenancy Act.* It encroaches upon the existing rights of landlords. Clause 148 in Chapter XII, which is practically the same provision as this, limits its application to temporarily-settled areas, but this clause—54A—will be applicable to permanently-settled areas. I have got another amendment in regard to permanently-settled areas, so I need not say anything about them now. I think, however, that this clause should not apply to any area at all, so I beg to move that it be deleted."

The Hon'ble MR. DAS said :—

"I have the same amendment, and, if Your Honour permits me, I will make some remarks."

The PRESIDENT said :—

"Certainly."

The Hon'ble MR. DAS said :—

"This I oppose, because it is really injurious to the interests of the raiyat. What was the actual state of things when the revisional settlement work began? From the year 1840, when we had a revenue settlement, up to some time in 1890, the raiyat was in the habit of breaking up waste land and bringing it under cultivation and enjoying the produce without paying any rent for it, because the zamindar did not care to measure the land. From time to time the zamindar measured the land, and then he and the raiyat settled up accounts and the raiyat paid something. Of course, it will be said that the raiyat was not really a raiyat there; it was the zamindar's property and he was encroaching upon it. So he was no doubt in that case, but the zamindar by custom had allowed him to use the land; there was good feeling, and the zamindar showed him that indulgence. But the revenue settlement work began. Let me quote the words of the Hon'ble Mr. H. McPherson with regard to these waste lands :—

'The Government of India have suggested that the relations of landlord and tenant in Orissa are not such as to justify interference of this kind, but in my opinion there is nothing which is more essential for the preservation of satisfactory agrarian conditions in Orissa than the authoritative settlement of the disputes that have arisen in the course of revision, or will arise in the course of maintenance, between landlord and tenant over this and other like matters. It is one of the regrettable results of revision work that it has brought to the prominent notice of the proprietors thousands of cases of petty extension of cultivation, each of which has become a bone of contention between landlord and tenant, the landlord claiming that the tenant is a trespasser and refusing his permission to the inclusion of the area in the original tenancy except on payment of a rack-rent, the tenant claiming, according to old custom, to hold at the average village rate or at the rate paid for similar lands in the vicinity. Had there been no revision settlement and no maintenance, the tenants would, in 99 cases out of 100, have gone on extending their cultivation without let or hindrance, and, at the next land-revenue settlement they would have been assessed to rent for the excess area at the average village rate, without any claim or remonstrance on the part of the zamindar. During the course of the last revenue settlement operations, no proprietor, to my knowledge, ever maintained that his tenant was a trespasser in respect of excess area, or claimed a rent in kind. The custom is undoubtedly, as stated by Mr. Taylor, that tenants in Orissa break up waste lands in villages with or without the express consent of the landlord, and from time to time the latter measures up the new cultivation and settles a fair rent which formerly used to be the village rate for similar lands in the vicinity. The extreme rise of prices in recent years has tempted the cupidity of landlords, and they are endeavouring to break down

* *i.e.*, Bengal Act VI of 1908.

[*Mr. H. McPherson; Mr. M. S. Das.*]

the old custom. It is our duty to stand between the landlord and tenant and see that the latter is not wronged by the former. We have largely created the difficulty by our interference. We should not run away from it.'

"The Hon'ble Member says 'we have largely created the difficulty by our own interference and we should not run away from it,' and to-day he wants to interfere again and bring about unfriendly relations. It reminds me of the traditional mother-in-law in an English house who comes and disturbs the friendly relations in the family, and says 'you don't agree, and I must be here to see that you do agree.' But this disagreement comes about as a result of her presence, and yet she says she must be there!

"But looking at the matter the from a serious point of view, there is the Government of India's opinion that the existing relations between landlordand tenant do not just fy such a measure. This clause is borrowed from Chota Nagpur. But how long has it been in force in Chota Nagpur? It has been there since 1908. I was reading only the other day a part of the speech delivered by the Lieutenant-Governor of East Bengal¶—a part of his farewell speech to his Council,—and noted that he said 'experience should be the basis of legislation, and we must proceed slowly.' We lose sight of the fact that during the last few years there have been several Acts introduced into Chota Nagpur with a view to placing on a satisfactory basis the relations of landlord and tenant there, and that, as yet, there has been no time to test their efficacy. Further, I beg to raise a very serious objection which, in my honest opinion, is deserving of consideration, and that is, that having in view the remark of the Government of India that the relations of landlord and tenant do not call for this clause, it is for consideration whether the consent of that Government should not be taken to the introduction of this special clause by the Select Committee in Select Committee."

The Hon'ble MR. H. MCPHERSON said:—

"May I rise, Sir, by way of explanation, to point out that this is not a clause newly introduced by the Select Committee? The principle was already embodied in the Bill in clause 148, and had been sanctioned by the Government of India. This clause merely embodies the same principle in a different place."

The Hon'ble MR. DAS said:—

"It is the same principle but it is very different in form. Then, Sir, we have had sufficient experience during the revision and revenue settlements of Orissa as regards the prudence and desirability of introducing one Act, which was meant for one part of the country, into another part of the country. The Bengal Tenancy Act* has been introduced in part into Orissa, but, despite that fact, Government found out that a separate Act for Orissa was necessary, and now, in the face of that experience,—an experience the result of which is before us, and has been the occasion of much discussion in this Council,—it is decided to import into Orissa a part of the Chota Nagpur Tenancy Act.†

"Looking at the Chota Nagpur Tenancy Act† I find this, Sir, that the oral or written consent of the landlord for the conversion of a raiyati holding shall be required in every case. Now, the state of things in Chota Nagpur is very different from that in Orissa. Let me quote from the Chota Nagpur Act "*Korkar* lands, means by whatever name locally known, such as *bahbata*, *khandwat*, *jalsasan* or *ariat*, which have been artificially levelled or embanked primarily for the cultivation of rice, and which previously were jungle, waste or uncultivated, or were cultivated upland or lands which, though previously cultivated, had become unfit for the cultivation of transplanted rice.' These different kinds of waste lands include also lands which have been cultivated once and have been allowed to grow waste. But the condition of things is very different in Orissa, and nobody can say how this Chota Nagpur provision will work in Orissa. Further, the introduction of this clause into Orissa will certainly disturb the happy and peaceful relations between landlords and tenants in Orissa which have existed hitherto. Who wants it? Neither the zamindar nor the raiyat. The

* i.e., Act VIII of 1885. † i.e., Bengal Act VI of 1908.
¶ Sir Charles Bayley.

zamindar may be foolish. He sleeps over his rights. He allows the raiyat to cultivate his lands without taking any rent from him. That is his lookout. But I suppose he is not so foolish, but knows that, after all, the raiyat is something like a garden to him. Every time he (the zamindar) goes to him, he will have something from him, and therefore he allows him to have all these advantages. Again, the raiyat does not want it. The clause is introduced solely to please the Settlement Department. The Settlement Officer is there and he says: 'I have created one disturbance, and I mean to do the same thing which created the disturbance before.' That is the sort of argument I submit that this clause ought to be removed and that it is not called for. It is really legislating to disturb a happy and peaceful state of things. We do not want to increase litigation and friction between landlord and tenant The one is rich and the other is poor. There must, at times, be a conflict of interests between these two classes of people, but the less the prominent points of this conflict are brought to the notice of the parties, the better for the parties, and the better will be the relations between them. If an attempt is made by legislation to bring into prominence the diverse relations existing between the two, the result will be friction, and I think peace ought to be bought at any price, even at the price of the desire to legislate."

The Hon'ble MR. MADDOX said:—

"Sir, I think that if an Uriya raiyat were here, and could have understood the latter part of the debate, he would perhaps recognise his mother-in-law in the Hon'ble Mr. Das. I do not see how the Hon'ble Mr Das can say that this clause is not designed in the best interests of the raiyats. It is designed to give them protection, and to preserve to them the fruits of their labours subject to proper control by the landlords. I may say that this clause incorporates one of the conditions on which this legislation was founded. Many grievances were considered, and as the Hon'ble Mr. Das mentioned yesterday, the *bajiaftidars* were one of the classes who were found to have been faultily recorded in places. The *bajiaftidars* have now been put on a better footing in this Bill, as also the *chandnadars* and the proprietary tenure-holders and others. This provision is one of the means which have been sought in this Bill whereby to redress grievances so far as the raiyats are concerned, and there are others for the advantage of landlords and zamindars. It was found that the latter had difficulty in paying their land-revenue, and a concession has been devised whereby they shall get, as an addition to their private lands, lands which were found to be in their cultivation at the last settlement. These lands will be recorded as their *nij-jote* or private lands, on which occupancy-rights will not accrue, in addition to the *nij-jote* lands which they had before, that is to say, the proprietors' private lands will be increased by double the amount which they formerly had. In return for this concession the zamindars are asked to recognise the lands which the tenants have reclaimed by their exertions. It is a part of the concession which the landlords will have to make, in return for which they will get a concession of increased area of private lands. I think that this particular clause is a very fundamental clause indeed, and I beg the Council to retain it."

The Hon'ble MR. H. MCPHERSON said:—

"Sir, I will first endeavour to explain to the Council the history of this clause as it appears not to be clear. The amendment now under discussion and the ten following amendments relate to the reclamation of waste lands by raiyats. In the course of the revision settlement it was found that raiyats were in possession of areas, usually of inconsiderable extent, which, from a comparison with the maps and records of the previous settlement, appeared to be reclamations of former waste lands. A considerable amount of dispute arose over these petty reclamations, the raiyats contending on the one hand that they brought them under reclamation in accordance with ancient custom or with the consent, tacit or expressed, of the landlord or his local agent, the landlord contending, on the other hand, that the reclaimers were trespassers. The disputes were, in practically all cases,

amicably settled on the interposition of Assistant Settlement Officers, the landlords withdrawing their objections on receipt of a small *salami* from the raiyat and a fair and equitable rent being settled for the additional lands in accordance with the provisions of section 52 of the Bengal Tenancy Act,* corresponding to clause 54 of the present Bill. When the Hon'ble Mr. Maddox explained to the Orissa Committee of 1909 the concession which he proposed to recommend to Government with regard to private lands of proprietors in Orissa, the proprietors who took part in the proceedings acquiesced in his proposal that the Orissa Tenancy Bill should include provisions on the lines of the Chota Nagpur Tenancy Act† for the assessment of new reclamation to which landlords had not taken objection within two years of its commencement. These provisions were embodied in clause 148A, which is a part of the maintenance chapter of the Bill. It is still uncertain whether the policy of maintenance will be extended to Orissa, and it is possible that Chapter XII may never be given effect to. The Select Committee have therefore repeated the provision of clause 148A, with certain modifications, in this clause 54 A. If there be a periodical revision of records at regular intervals of three or five years, landlords will receive up-to date maps and records of their villages and will be in a position to detect, with ease, encroachments on waste lands. In these circumstances, there is no reason why provisions which find a place in the Chota Nagpur Tenancy Act,† should not apply to areas in which the provisions of Chapter XII are in force. The case is somewhat different in areas that are not affected by Chapter XII. In such areas, or throughout Orissa, if it be decided to have no maintenance of records in Orissa), it was thought by the Select Committee that two years was too short a period in which to expect a landlord to take cognizance of unauthorised extensions of cultivation. The period was accordingly extended to four years. A further concession was made that if the reclaimed areas were situated in tracts of waste land that had not yet been included in villages, as defined in clause 3, the ordinary 12 years' rule should apply. Such tracts are said to exist in some of the larger permanently-settled estates like Kujang or Kanika, and it was represented that reclamation may go on undetected in such areas for more than four years. It was therefore reasonable to make this concession in their favour. I oppose this and the other amendments to clause 54A, because I consider the clause to be necessary for the proper administration of the agrarian law and the regulation of the relations of landlord and tenant in Orissa. If a landlord neglects his estate to such an extent as to fail to detect for four years extensions of cultivation, it is only fair that he should pay for his neglect. It is grossly unfair that the average mofussil raiyat—who has spent his time, labour and money in making an addition to his holding, either in ignorance of the fact that his landlord's written or specific consent is necessary, or under the impression that he has made the reclamation with his landlord's knowledge or with the tacit consent of his landlord or of the landlord's local agent,—should, at the and of four, six or ten years be liable to be turned neck and crop out of the land which he has redeemed from barrenness and converted into a source of profit both to himself and his landlord. What we provide is that, in such a case, the labourer shall retain the land on condition that he pays a fair and equitable rent for the same The right of the reclaimer has always been regarded with special consideration in the agrarian economy of India. Clause 54 is a testimony to that, indicating as it does that the common practice is to measure up lands periodically and to assess additional areas that may be found to have accrued to holdings by reclamation. It was the old custom of Orissa. When the last revenue settlement of Orissa was made, rents were adjusted on an area basis and no landlord ever sought to deny the right of his raiyat over any area that appeared to be in excess of the previous settlement area or of the area shown in the landlord's own papers. I rest my defence of this provision on grounds of common honesty and equity. The clause, as it was drafted, commended itself to the approval of the landlords who were on the Select Committee. I would ask those of them who have now proposed

* *i.e.*, Act VIII of 1885.

† *i.e.*, Bengal Act VI of 1908.

these amendments to display a spirit of generosity and equity towards their tenantry in this matter and to withdraw their opposition.

"Before sitting down, I wish to make a few remarks regarding some points raised by the Hon'ble Mr. Das. I will first deal with his objection that, in this particular matter, we are copying from the Chota Nagpur Tenancy Act† a provision that has only been in force for four years, and that four years is not long enough to enable us to judge of its working. He has also told us that experience should be the basis of legislation. To my mind, the inclusion of this provision in the Chota Nagpur Tenancy Act† is a very strong argument indeed for its inclusion in this Bill The case of Chota Nagpur is exactly on all fours with that of Orissa. The old custom was undoubtedly in Chota Nagpur, as in Orissa, that raiyats who made additions to their holdings by reclamation had rent assessed on these additions. But what is now happening in Orissa happened also in Chota Nagpur. The landlords, instead of following the old custom, began to put forward the contention that the raiyats were trespassers in respect of these additional areas. I may here read a passage from Mr. John Reid's edition of the Chota Nagpur Tenancy Act.† The language in which he explains the reason why this addition was made to the Chota Nagpur Tenancy Act† runs thus:—

> 'The common practice according to which some landlords used to allow raiyats to prepare *korkar* without objection for a period of four or five years, and then sue them for ejectment as trespassers when the lands became valuable, is met by the provisions of sub-section 3). Unless the landlord now sues for ejectment within two years from the date on which the cultivator commenced to prepare the land, he will be deemed to have given consent and to have condoned the trespass (if any).'

"That is exactly what we are doing in Orissa. We find that landlords are beginning to object to these petty reclamations and to threaten that they will sue the raiyats in the Civil Courts for ejectment. As a matter of fact, they have sued in some cases, but they have never pressed the plea of trespass home We have settled, as I have said, thousands of these cases in the revision settlement without objection, and similar disputes which have gone to the Special Judge or the Civil Court have been settled amicably in the same way.

"In these circumstances we have embodied in the law a provision that, if reclamation has gone on without objection for a certain period, say four years, the landlord will be presumed to have given his consent and to have known that the raiyat is reclaiming the lands in question. In some ways I am indebted to the remarks that have fallen from the Hon'ble Mr. Das, because they support the arguments on which we have based the introduction of this provision into the Bill. He has told us that it has been from time immemorial the custom in Orissa for raiyats to reclaim additional areas, and to pay additional rent for them, when they are brought to light by periodical measurement. It is because this old custom is being infringed, that we are endeavouring to provide this compromise in the Bill.

"Then, the Hon'ble Mr. Das has taken hold of some opinions that I expressed elsewhere on this subject, to discuss what is really a different subject, viz., the subject of maintenance of records. That will come before the Council in due time. What I want to point out to the Hon'ble Mr. Das is that you do not avoid the difficulty by excluding a provision of this kind from your Bill. We should merely be running away from the difficulty it we took no action in the matter. The question has arisen. The doctrine of trespass is being maintained by some landlords, and, as a matter of fact, suits are being filed for the ejectment of reclaimers. I do not know in what sense the Hon'ble Mr Das can represent himself as a friend of the raiyats in this matter when he asks the Council to exclude this clause from the Bill. If no action be taken, the question will only be postponed

† *i.e.*, Bengal Act VI of 1908

[*The President; Raja Rajendra Narayan Bhanja Deo; Mr. M. S. Das; Rai Sheo Shankar Sahay Bahadur; Mr H McPherson; Mr Saiyid Wasi Ahmad; Babu Hrishikesh Laha*]

until the next maintenance operations, if there be any such, or until the next revenue settlement comes on. We do not want to wait till it is too late.

"Again, the Hon'ble Mr. Das says that, by this measure, we are going to disturb the friendly relations that subsist between landlords and tenants in Orissa. He says that the Orissa landlords are people who sleep over their rights. That is just what we want to avoid. We do not want them to sleep over their rights for ten or twelve years and then wake up to find that valuable plots of land have been made by their raiyats, which the latter can claim as their own. We want to have the matter decided on the spot and at once. With these remarks I oppose the amendment."

On the Hon'ble Mr. Das rising to reply, the President said:—

"I do not think that you have got the right to reply in regard to this amendment."

The Hon'ble RAJA RAJENDRA NARAYAN BHANJA DEO said:—

"The Hon'ble Member also has a motion on it."

The PRESIDENT said:—

"In that case the Hon'ble Member ought to have moved the amendment first if he wanted to have the right of reply."

The Hon'ble RAJA RAJENDRA NARAYAN BHANJA DEO said:—

"I think, Sir, that the landlords in Orissa are not very interfering and do not interfere with waste land cultivation, and the present happy state of things will be disturbed by the introduction of this new clause. Therefore, I wish to press this motion."

The motion was then put and lost.

The following motion was, by leave of the President, withdrawn:—

132. The Hon'ble Mr. M. S. Das to move that clause 54A be omitted.

133. The Hon'ble Rai Sheo Shankar Sahay Bahadur moved that the words "oral or" in line 2 of clause 54A (*1*) be omitted.

He said:—

"Sir, these words will unnecessarily increase litigation. In every case the trespasser shall raise the plea of oral consent. It is difficult to decide a case on oral evidence, and as this is an exceptional privilege to the raiyat, we should confine ourselves to 'written consent,' which will be easy to prove or disprove."

The Hon'ble MR. H. MCPHERSON said:—

"I do not accept this amendment. I think it is better to leave the words 'oral or' as they are in the clause."

The motion was then put and lost.

The following motions were, by leave of the President, withdrawn:—

134. The Hon'ble Mr. Saiyid Wasi Ahmad to move that the words "oral or" in line 2 of clause 54A (*1*) be omitted.

135. The Hon'ble Rai Sheo Shankar Sahay Bahadur to move that clause 54A (*2*) be omitted.

136. If motion No. 131 be not carried, the Hon'ble Raja Rajendra Narayan Bhanja Deo to move that clause 54A (*2*) be omitted.

137. The Hon'ble Babu Hrishikesh Laha moved that the word "twelve" be substituted for the word "four" in line 3 of clause 54A (*2*).

He said:—

"Sir, this provision lays the axe at the root of proprietary right. The principle of the right of property is that a man is not only free to dispose of his land usefully, but also to let or refuse to let at his own pleasure without anybody's leave, in fact to do what he likes with his own. This clause gives a right to any trespasser who may scatter a few seeds upon a plot of land unknown to the landlord, and there is no reason whatever why a landlord

should be compelled to recognise him as a tenant after a short period. The raiyat may be a most undesirable person, and the landlord will have no chance of choosing and settling with another raiyat who may give a better rent and better security for the payment of such rent in view of the increase of population, increase of agricultural profits and increase of demand for land. If, for some reason, the trespasser remains in possession, and if he refuses to execute a lease tendered by the landlord, the landlord will be driven to the necessity of instituting a suit in order to obtain a fair rent from him, and he will have no right to deal with him at his discretion. If this clause be passed, a redistribution of property will be effected, the raiyats being given a right which they do not now possess but which they will try to obtain by hook or by crook, and the landlords will be relegated to a back seat though their responsibilities as owners will remain just the same. In fact, this clause proposes a redistribution of property between landlord and tenant without offering any compensation to the landlord for the deprivation of the sum of his rights. It will set up class against class and aggravate the evil of litigation. By clauses 110 and 257, the rights of landlords, both in temporarily and permanently-settled estates, to contract with their raiyats have been taken away, and the Revenue Officer has been made the arbiter of their fortunes, and now the power of the landlord, even to drive away a trespasser from his own land, has been withdrawn, and this I should say is the last straw with which to break his back.

"No reason has been assigned why the period of twelve years provided by the general law of limitation for bringing suits against trespassers should be curtailed to four and two years in permanently and temporarily-settled estates respectively. The period of twelve years was provided after due deliberation. The difficulty and inconvenience of the landlord may be best realised if the trespasser can manage, in collusion with the landlord's agent and employés, to keep back all information about the occupation from his knowledge. This collusive and clandestine occupation will tend to increase the value of the land, and will hold out a premium to encroachments without taking into account the loss which the landlord might sustain. Thus, I assert that the periods prescribed in the Bill are too short, and that the general law of limitation should be retained."

The Hon'ble MR. H. MCPHERSON said :—

"Sir, I oppose this amendment because I think that the Council have practically voted against it already. If you substitute '12' for '4' in clause 54 (2), you may as well wipe out the clause altogether. As the Council have voted in favour of the clause, I do not think the Council can possibly accept the suggestion that "12" be substituted for "4."

A division was then taken, with the following result :—

Ayes—12.	*Noes—29.*
The Hon'ble Babu Bhupendra Nath Basu.	The Hon'ble Mr. Slacke.
" Rai Sita Nath Ray Bahadur.	" Raja Kisori Lal Goswami.
" Sir Bijay Chand Mahtab, Maharajadhiraja Bahadur of Burdwan.	" Mr. Greer
" Raja Rajendra Narayan Bhanja Deo.	" Mr. Macpherson.
" Mr. Saiyid Wasi Ahmad.	" Mr. Collin.
" Maulvi Saiyid Muhammad Fakhr-ud-din.	" Mr. Stevenson-Moore
" Babu Hrishikesh Laha.	" Mr. Chapman.
" Mr. Reid.	" Mr. Finnimore.
" Rai Sheo Shankar Sahay Bahadur.	" Mr. Kerr.
" Mr. Das.	" Mr. Stephenson.
" Rai Baikuntha Nath Sen Bahadur.	" Mr. Maddox.
	" Mr. Küchler.
	" Mr. Morshead.
	" Sir Frederick Loch Halliday, Kt.
	" Mr. Cumming.
	" Mr. Bompas.

Ayes—concld.

The Hon'ble Khan Bahadur Maulvi Sarfaraz Husain Khan.

Noes—concld.

The Hon'ble Mr. Oldham.
" Mr. H. McPherson.
" Babu Janaki Nath Bose.
" Maharaja Bahadur Sir Prodyot Kumar Tagore, Kt.
" Sir Frederick George Dumayne, Kt.
" Lieut.-Col. G Grant-Gordon
" Babu Kirtanand Sinha.
" Babu Deba Prasad Sarbadhikari.
" Mr. Apcar.
" Mr. Stewart.
" Mr. Golam Hossein Cassim Ariff.
" Maulvi Saiyid Zahir-ud-din.
" Babu Braj Kishor Prasad.

The following Members were absent:—

The Hon'ble Mr. Mitra.
" Kumar Sheo Nandan Prasad Singh.
" Maharaja Manindra Chandra Nandi.
" Maharaj-Kumar Gopal Saran Narayan Singh.
" Mr. Norman McLeod.
" Dr. Abdullah-ul-Mamun Suhrawardy.
" Mr. Dutt.
" Babu Mahendra Nath Ray.
" Mr. Dip Narayan Singh.
" Babu Bal Krishna Sahay.

The result of the division was *Ayes* 12, *Noes* 29, and the motion was, therefore, lost.

138. The Hon'ble Babu Hrishikesh Laha moved that the word "eight" be substituted for the word "four" in line 3 of clause 54A (2).

He said:

"For reasons stated I beg to move that the word 'eight' be substituted for the word 'four' in line 3 of clause 54 (a) (2)."

The Hon'ble Mr. H. McPherson said:—

"I cannot accept this amendment, Sir. I have already explained that, in my opinion, four years is the maximum limit that ought to be allowed for interference by the landlord. There are several amendments suggesting "12," "8," and "6" instead of "four." I ask the Council to stick to the period which is in the Bill. I think this is a matter in which the zamindars might profitably display a little generosity and equity towards their tenants, instead of making this persistent opposition to the provisions of the clause. If they are going to admit the principle at all, they had better admit it generously than attempt to whittle it down in this way."

The motion was put and lost.

139. The Hon'ble Rai Sheo Shankar Sahay Bahadur moved that the word "six" be substituted for the word "four" in line 3 of clause 54A (2).

He said:—

"Mine is a modest amendment. I thought the Hon'ble Member in charge of the Bill would be able to accept it, but since he has opposed the other amendment and is not prepared to make any concession, I beg to withdraw it."

The motion was then, by leave of the President, withdrawn.

The following motion was, by leave of the President, withdrawn:—

140. If motions Nos. 131 and 136 be not carried, the Hon'ble Raja Rajendra Narayan Bhanja Deo to move that the word "six" be substituted for the word "four" in line 3 of clause 54A (2).

141. The Hon'ble Raja Rajendra Narayan Bhanja Deo moved that the following be added after clause 54A (3), namely:—

"(4) Nothing in this section shall apply to permanently-settled areas."

He said:—

"There are large areas of waste land in permanently-settled estates. It is to the benefit of the proprietors of those estates to encourage cultivation. Every facility is given to authorized cultivation. Clandestine cultivation ought to be checked. The following are the principal arguments put forth for retaining this clause:—First, that as the Government has been generous enough to allow the proprietors to retain the *nij-chas* lands that are in actual cultivation in the temporarily-settled area, it is necessary to give some concession to the raiyats in this Bill. But the Bill does not give any compensation to the permanently-settled area, so I do not see why the right should be allowed there. The second argument is that the extension of cultivation will be checked, or the legitimate growth of land-revenue interfered with. This argument has equal force so far as the permanently-settled area is concerned. It is to the interest of the landlords to extend cultivation, and, as the *jama* is settled in perpetuity, there is no question of the increase in land-revenue being interfered with. Sir, on these grounds I move 'that nothing under this section shall apply to permanently-settled areas.'"

The Hon'ble MR. H. MCPHERSON said:—

"Sir, I oppose this amendment. After the long explanation I have already given of the clause I think it is unnecessary to speak at any length on this amendment. One justification for this clause is, as my hon'ble friend Mr. Maddox has pointed out, that it was part of a bargain that was made with the temporarily-settled proprietors; but I rest the clause on the broader grounds of common honesty and common equity. I have already explained that I think it is grossly unfair to allow a raiyat to cultivate for four years—twelve years in the case of the larger tracts of waste land—and then to turn him out of the land after he has made it profitable both to himself and his landlord. On these broad grounds I oppose any curtailment of the scope of operation of this clause."

The Hon'ble RAJA RAJENDRA NARAYAN BHANJA DEO said:—

"The Hon'ble Mr H. McPherson and also the Hon'ble Mr. Maddox have submitted that this is a compromise between the temporarily-settled zamindars and the Government, but I do not think the zamindars of the permanently-settled area were ever consulted in this matter, and as regards the constitution of the Orissa Committee, there was no one from the permanently settled area in that Committee; and, Sir, it is rather hard on the proprietors of the permanently-settled areas. If there is a custom, such as the Hon'ble Member says exists in Orissa, such custom has not been inquired into in the permanently-settled area, and so the Council does not know what the custom is in the permanently-settled area. Seeing that that has not been ascertained I think that the provisions of this clause should not be applied."

The motion was then put and lost, after which the Council adjourned for lunch.

The Orissa Tenancy Bill, 1912.

[*Mr. Butler; Mr. Saiyid Wasi Ahmad.*]

On resumption, the Hon'ble Mr. BUTLER made the prescribed Oath of his Allegiance to the Crown, and the debate on the Orissa Tenancy Bill was then proceeded with.

Clause 57.

142. The Hon'ble Mr. Saiyid Wasi Ahmad moved that the following be substituted for clause 57, namely:—

> "57. When a tenant makes a payment on account of rent, the payment may be credited to the account of such year and instalment as the landlord thinks fit."
>
> Appropriation of payments.

He said:—

"The clause was divided into two parts in the original Bill, and this clause is a complete reproduction of section 55 of the Bengal Tenancy Act.* I am aware, Sir, that the provisions of this clause are mainly based on sections 59 and 60 of the Indian Contract Act.† Section 59 of that Act provides that when a debtor, owing several distinct debts to one person, makes a payment to him, either with express intimation or under circumstances implying that the payment is to be applied to the discharge of some particular debt, the payment, if accepted, must be applied accordingly. Section 60 of the same Act provides that where the debtor has omitted to make this intimation, and there are no other circumstances indicating to which debt the payment is to be applied, the creditor may apply it at his discretion to any lawful debt actually due and payable to him from the debtor, whether its recovery is or is not barred by the law in force for the time being as to the limitation of suits. Now, it seems to me that the application of these two sections of the Contract Act† in the case of landlord and tenant is not right. The relation that exists between the debtor and his creditor, to my mind, materially differs from the relation that exists between a landlord and his tenants. Under these two sections, which mainly govern the case of a creditor, it is possible that a debtor, under certain circumstances, if there be more than one debt, may be obliged to make a condition that he is making the payment towards a particular debt. For instance, a man has borrowed money from a creditor, and mortgaged a property of his, and similarly he has mortgaged to the same creditor another property and also a third property. Therefore, he owes the creditor three distinct debts under three distinct mortgage bonds. Circumstances may arise in his case under which he may require a particular property to be freed, and he may, when making a payment, intimate to the creditor that this particular money should be credited to the particular debt for which that particular property was mortgaged. But the case of a tenant materially differs, inasmuch as a tenant, when he owes rent to a landlord, can have no occasion or necessity to intimate to the landlord, at the time of payment, that he is making the payment for a particular time and for a particular instalment, unless it be conceded that the tenant, at the time of making the payment, has in view the application of the question of limitation. If the tenant has not paid for a series of years, and if he goes with one year's rent to his landlord and tells him that he pays for the current year, the presumption will naturally arise that he wants to take a mean advantage of the law of limitation. There is the question of limitation pending, and why should the tenant pay for the current year when he owes his landlord for three or four years? The Hon'ble Member in charge of the Bill has told us that the Bengal Tenancy Act* has worked satisfactorily for the past very many years, and therefore there is no reason to depart unnecessarily from that Act. So far as Bihar is concerned, and so far as the collection in Bihar by landlords is concerned, I can very safely assert that this particular

---

* *i.e.*, Act VIII of 1885.
† *i.e.*, Act IX of 1872.

[*Mr. Saiyid Wasi Ahmad.*]

section of the Bengal Tenancy Act* has not been taken much advantage of by tenants. The usual way in Bihar is that when a tenant comes to make payment in a zamindar's cutchery he simply says, 'Here's your rent,' and the money is credited from the first year in which any defalcation has taken place. In that way the landlord and tenant make their settlement.

"There is another remark which I should like to make. This clause will unnecessarily encourage litigation. For that strained relationships would result between the landlord and his tenant, if the clause is passed in its present form, goes without saying. At present, whenever the question of limitation comes in and the zamindar is thinking of instituting a suit against his tenant, the tenant comes to him with one year's rent and tells him: 'Look here, I pay you one year's rent. You can very well wait for another year more.' And the zamindar agrees, and waits for another year before he brings a suit against his tenant. But if you allow this clause to be passed, the result will be that the tenant will want his landlord to credit his money towards a particular year's rent and the zamindar will also, to avoid the law of limitation, at once rush into the Law Courts. This sort of unnecessary litigation should always be avoided. I should like to be enlightened by my friend, the Hon'ble Mr. Das, as to how this section has been working in Orissa, but, as I have already stated, in Bihar there has been no occasion on which a tenant has desired to make use of this section. And I ask the Hon'ble Members who have held charge of districts in Bihar to cite me cases in which the tenant demanded that, under the corresponding section of the Bengal Tenancy Act,* his money should be credited against any particular period.

"There is also another danger if you allow this clause to be passed into law, and it is this: Where is the remedy for the tenant, so far as evidence goes? Here you give him a power to go to the zamindar's cutchery and tell the *amla* of the landlord that he is going to pay rent for a particular year. I presume he gives them a verbal intimation. Now consider the actual position. In the cutchery, the tenant, who is generally an illiterate person, makes payment for a particular year. His case is that, according to the terms of clause 57, he, at the time of payment, intimated to the servant of the zamindar verbally that the rent was meant to be credited for a particular year. The *amla* of the zamindar, in order to avoid limitation, enters the money against a year different from that which is proposed by the tenant. Now, in most cases, the tenant cannot read the receipts. He pays down the amount with a clear intimation to the *amla* that it is for the year, say, 1297. The *amla* credits it against 1295. The tenant goes away from the cutchery. Several days after, he gets his receipt read by somebody, and finds that a wrong entry has been made. What is the remedy that you provide for him in a case like this? All that he can do is to institute a suit. If he, at the time of making payment, intimated to the *amla* of the zamindar that the payment was meant for a particular year, his receipt shows otherwise. He has no evidence whatever. At the time of payment he went alone to a place whence he can get no evidence if the zamindar chooses to be dishonest. The patwari will swear against him. Now what will you be encouraging? The tenant will naturally realise that, at the time of going to the cutchery, he was alone. And as he cannot produce any evidence, he will be guided by the circumstances of the case, and try to secure false evidence in support of his contention. He will go to some other tenants, and say: 'Look here, you come and depose in Court that, at the time I went to make payment, you also came with me, and heard me telling the *amla* to credit the amount to such and such a year.' Thus, you are practically—if you will but think about the consequences of this clause—encouraging the subornation of false evidence. I, therefore, submit for the consideration of Your Honour and of this Council that if you consider the two sub-clauses of clause 57 carefully, you will come to the conclusion that they will cause hardship both to the landlord and the tenant. Therefore, Sir, in the interest of both, I desire to move that, in the case of the landlord and tenant, a difference ought to be made from the

* *i.e.*, Act VIII of 1885.

provisions of the Indian Contract Act,* and that the zamindar ought to be given the option of crediting any amount of money which is paid to him by a tenant to any year that he may wish. Why should you, indeed, protect the tenant, who in this instance, is the defaulter? He is the man who has not paid rent. He is decidedly in fault. He comes after 3 or 4 years, and says, 'I want to pay for one year only, and I want to pay for a particular year.' After all, the zamindar is the creditor, and option should be given to him to credit that amount of money to any year he considers necessary, and this course would prevent at least one thing, and that is, that zamindars who do not like to institute suits against their tenants will not have to go to Law Courts. I have known of cases in which the zamindar settles with the tenant by taking from him one year's rent and crediting it to the first year of default. This prevents him from going into Law Courts to guard against limitation and this also satisfies the raiyat."

The Hon'ble MR. DAS said:—

"Sir, I had no intention to speak on this amendment, but as the Hon'ble Member who has moved the amendment has referred to me, all that I can say is that the question is one which raises a difficult problem as to what can be done for the raiyat. He is ignorant He pays his rent for one year, and the receipt is given for another year He cannot read. There will always be men in the world who will take advantage of the ignorance of other people, and surely zamindars' men are not above that class. Legislate as much as you like, but zamindar's *gamasthas* will not come from a different class of people. Nothing can make the raiyat educated or literary. An anecdote suggests itself to my mind. I hope I shall not be misunderstood. When I make use of anecdotes, I do not mean to offend any one's feelings. The anecdote that suggests itself to my mind is this: A man who had never learnt to read and write saw people use glasses, and supposed them to be learned. He went to a spectacle shop. He was asked to try pair after pair, but nothing suited him, as, on looking through the glasses, he saw that printed letters were to him as meaningless as they were before. Then the shop-keeper asked him, "do you know how to read?" The man replied, "why should I come for glasses if I knew how to read?" So we think that, as soon as we pass a law beneficial to the tenant, he will know how to use his rights. But that is far from being the fact. I hold myself second to none in this Council in my endeavour to help the raiyat. But there is no getting out of difficulties You may change the law, but the same defect arises. If the zamindar chooses to be oppressive, the raiyat can do nothing. I do not know anything of Bengal, but my experience in Orissa is that there are not many zamindars of that class there. There are a few, but they are exceptions, and hence it is for the Council to consider whether this amendment is desirable or not."

The Hon'ble MR. KERR said:—

"Sir, I regret that so much eloquence should have been wasted, but I cannot advise the Council to accept the amendment The Hon'ble Mover of the amendment has given us plenty of *a priori* reasons, but we must now proceed along the duller paths of experience and common sense to which the Hon'ble Member has certainly not conducted us. The simple facts are that there have been no litigation and no strained feelings over this section for the last 20 years, and we need not, therefore, pay any attention to *a priori* reasoning. The clause which is under discussion is a reproduction of section 57 of the Bengal Tenancy Act† and has been in force in Orissa since 1891. I find that there has been no ruling of the High Court under this section, and, as I have said before in connection with another section, the Council may safely take it that a provision of the law which has never been brought before the High Court can be treated as thoroughly satisfactory. On the merits, also, there is not much to be said for the Hon'ble Member's proposal. The raiyat is the debtor, and when he brings in money to pay his dues it is surely for him to say to what

* *i.e.*, Act. IX of 1872.
† *i.e.*, Act. VIII of 1885

particular portion of the arrears the payment should be applied. I do not see how such action can, in any way, injure the landlord; but the Hon'ble Member's proposal might injure the raiyat. The Hon'ble Member has told us that there is the question of limitation, of which the raiyat might take advantage. But there is also the question of enhancement. Supposing a raiyat is in arrears of rent for three years, and supposing that, during the three years, the landlord has made an enhancement of rent which the raiyat has not accepted; the landlord, if he were left to himself, would apply the payment in such a way as to make it easy for him to prove that an enhancement had taken place, but there is no reason why he should be given these facilities. On the other hand, there is every reason why the raiyat should be able to say: "I wish the landlord to apply this payment to the liquidation of undisputed arrears and to leave the question of the disputed arrears for decision by private arrangement or by a competent Court." The Hon'ble Member is mistaken in thinking that no use is made of the section in Bihar. Directly a rent dispute arises, the first thing a tenant does is to endeavour to have his payments applied in such a way as not to prejudice his side of the case. The evidence is not always so clear as it might be, but this is because the landlord tries to manipulate the payments in such a way as to support his side of the case. But the tenant is entitled to the first say. It is, I believe, a settled principle of law that a debtor who makes a payment has a right to stipulate to what portion of his dues that payment should be applied, and there is no reason for altering this in the case of landlord and tenant. I must, therefore, ask the Council to reject the amendment."

The Hon'ble RAI BAIKUNTHA NATH SEN BAHADUR said:—

"I think, Sir, that a legislative body ought not to abandon a principle which has been acted upon for over 50 years, and that a new departure ought never be made unless there is a very strong case made out. In the Bengal Tenancy Act* this principle has been adopted, and a debtor has a right when making a payment of money to specify the way in which it is to be appropriated. This rule is based on sound universal principles of justice and freedom of action. A debtor may say 'I owe you different items of money, but I pay you this amount for the specified debt,' and thus he has freedom of action based upon universal principles of justice. As this principle has been acted on for over half a century, there is no reason why a new departure should now be made."

The Hon'ble MR. SAIYID WASI AHMAD said:—

"Sir, there was only one thing that I wanted to hear from the Hon'ble Member in charge in reply to my amendment, namely, what could be the motive of a tenant in going and dictating his terms to the landlord? I think that, in case of an ordinary debtor and creditor, an occasion may arise in which the the debtor may be almost forced to go to the creditor and dictate his terms; but, in the case of a tenant who owes rent for three or four years can anyone possibly imagine a single case in which the tenant will be under the necessity of dictating his terms? I cannot imagine that any such case can ever be thought of, and, in the absence of such cases, the only conclusion that I can arrive at is that, whenever a tenant comes to a zamindar and dictates his terms, his object is to defeat the terms of the Indian Limitation Act † and thus avoid limitation so that one or two years may expire, and the zamindar may not institute a case against him for arrears of rent. Except in such a case as this, I cannot for a moment conceive an occasion on which a tenant might say:— 'Well, I owe you rent for four years from 1904 to 1907, but I pay you for 1907 only.' I submit, Sir, that unless and until substantial reasons are placed before the Council in support of the fact that there may be occasions on which a tenant may be forced to go and say that he wants his payment to be credited to a particular year, the Council ought to accept this amendment."

---

* *i.e.*, Act VIII of 1885.
† *i.e.*, Act IX of 1908.

[Mr. Saiyid Wasi Ahmad.]

A division was then taken with the following result :—

Ayes—6.

The Hon'ble Raja Rajendra Narayan Bhanja Deo.
" Mr. Golam Hossein Cassim Ariff.
" Mr. Saiyid Wasi Ahmad.
" Maulvi Saiyid Muhammad Fakhr-ud-din.
" Mr. Das.
" Khan Bahadur Maulvi Sarfaraz Husain Khan.

Noes—53.

The Hon'ble Mr Slacke.
" Raja Kisori Lal Goswami
" Mr. Greer.
" Mr. Macpherson.
" Mr. Collin.
" Mr. Stevenson-Moore
" Mr. Chapman
" Mr. Finnimore
" Mr. Kerr.
" Mr Stephenson.
" Mr. Butler.
" Mr. Maddox.
" Mr. Küchler.
" Mr. Morshead.
" Sir Frederick Loch Halliday, Kt.
" Mr. Cumming.
" Mr. Bompas
" Mr. Oldham.
" Mr. H. McPherson.
" Babu Janaki Nath Bose
" Maharaja Bahadur Sir, Prodyot Kumar Tagore, Kt.
" Sir Frederick George Dumayne, Kt.
" Kumar Sheo Nandan Prasad Singh.
" Lt.-Col. G. Grant-Gordon.
" Sir Bijay Chand Mahtab, Maharajadhiraja Bahadur of Burdwan.
" Babu Kritanand Sinha.
" Babu Deba Prasad Sarbadhikari.
" Mr. Apcar.
" Mr. Norman McLeod.
" Babu Hrishikesh Laha
" Maulvi Saiyid Zahir-ud-din.
" Mr. Reid.
" Rai Sheo Shankar Sahay Bahadur.
" Rai Baikuntha Nath Sen Bahadur.

[*Mr. Saiyid Wasi Ahmad ; Mr. H. McPherson ; Raja Rajendra Narayan Bhanja Deo.*]

The following Members were absent :—

The Hon'ble Mr. Mitra.
" Babu Bhupendra Nath Basu.
" Rai Sita Nath Ray Bahadur.
" Maharaja Manindra Chandra Nandi.
" Maharaj Kumar Gopal Saran Narayan Singh.
" Mr. Stewart.
" Dr. Abdullah-al-Mamun Suhrawardy.
" Mr. Dutt.
" Babu Mahendra Nath Ray.
" Babu Braj Kishor Prasad.
" Mr. Dip Narayan Singh.
" Babu Bal Krishna Sahay.

The result of the division was, *Ayes* 6, *Noes* 34, and the motion was therefore lost.

Clause 60.

143. The Hon'ble Mr. Saiyid Wasi Ahmad had given notice to move that the following proviso be added after clause 60 (*3a*), namely :—

"Provided that the Collector shall not hold an inquiry or impose a fine if the tenant has already instituted a suit as provided in sub-sections (*1*) and (*2*) of this section."

He said :—

"Your Honour.—With your permission, and with the previous consent and approval of the Hon'ble Member in charge, I beg to move the above amendment in a slightly modified form. The amendment will run thus: That, after sub-clause (*3b*) of clause 60, the following sub-clause (*3c*) be inserted :—

'(*3c*) Nothing in sub sections (*3a*) and (*3b*) shall apply if the tenant has already instituted a suit under sub-section (*1*) or sub-section (*2*).'

"I do not think that any speech is necessary in moving this amendment, inasmuch as I believe that the Hon'ble Member in charge will accept it."

The Hon'ble MR. H. MCPHERSON said :—

"Sir, I accept this amendment."

The motion was then put in the modified form and agreed to.

The following motions were, by leave of the President, withdrawn :—

144. The Hon'ble Raja Rajendra Narayan Bhanja Deo to move that the word "summary" in the last line of clause 60 (*3a*) be omitted.

145. If motion No. 144 be carried, the Hon'ble Raja Rajendra Narayan Bhanja Deo to move that the word "summary" in line 1 of clause 60 (*3b*) be omitted.

146. The Hon'ble Mr. H. McPherson moved that the words "on his own motion or" be inserted after the word "either" in line 2 of clause 60 (*3b*).

[*Mr. H. McPherson ; Rai Sheo Shankar Sahay Bahadur.*]

He said:—

"Sir, I propose that the words 'on his own motion or' be inserted after the word 'either' in line 2 of clause 3 *b*).

I do so because there is no provision in the sub-clause, as it stands, for the Collector to take action when the facts come directly to his notice, either as a revenue officer or as a Court. Unless this small addition is made, then, if the Collector be in camp, and facts come to his notice which render it desirable for him to take action under this clause, he will have to go through the farce of having a report made to himself by a subordinate officer. Similarly, in the case of sub-clause (*4*), which provides for reports being made to the Collector when instances of neglect to give receipts come to the notice of Courts, I think it is desirable that the Collector should be able to take action of his own accord if the offence comes to his notice when he is himself sitting as a Court."

The motion was put and agreed to.

The following motion was, by leave of the President, withdrawn:—

147. The Hon'ble Mr. H. McPherson to move that the following be inserted after clause 60 (*3b*), namely:—

"(*3c*) When a fine is imposed under sub-section (*3a*), the Collector may, in his discretion, award to the tenant, by way of compensation, such portion of the fine as he may think fit."

148. The Hon'ble Rai Sheo Shankar Sahay Bahadur moved that the words "between the landlord and his tenant" be inserted after the word "proceeding" in line 1 of clause 60 (*4*).

He said:—

"Sir, this refers to the report made by any court or presiding officer that a landlord has failed to give a receipt to his tenant. It is desirable that he should not make such report unless he ascertains the fact to be reported in the course of a proceeding between the landlord and his tenant. It is obviously unfair that such report should be made behind the back of the landlord, and without giving him any opportunity of disproving the charge against him. As the clause stands, the court or officer may come to a finding in a proceeding between strangers, which may very often not be correct and will thus simply cause harassment to the landlord."

The Hon'ble Mr. H. McPherson said:—

"Sir, I cannot accept the addition proposed by the Hon'ble Member, because it is desirable that the sub-clause should be left as wide as possible. Most of the difficulties connected with the administration of the agrarian law are caused by the wilful neglect of landlords to deliver to their tenants the receipts prescribed by the law, and it is desirable to facilitate, as far as possible, the enforcement of the law. This addition will merely circumscribe the action of the Courts in reporting cases of neglect when they come to notice. It is easy to imagine a case in which the proceedings are between landlord and landlord, and in which both landlords may have to give evidence regarding the receipt of rent from tenants. In such a case it may come to the notice of the Court that receipts have not been granted in the proper form. I do not see why we should cut out any particular class of cases by making the proposed addition."

The motion was then put and lost.

Clause 62.

The following motions were, by leave of the President, withdrawn:—

149. The Hon'ble Rai Sheo Shankar Sahay Bahadur to move that the words "under sections 13A, 13B or 13C" in line 1 of clause 62 (*a*) be omitted.

150. The Hon'ble Rai Sheo Shankar Sahay Bahadur to move that clause 62 (*c*) be omitted.

[*Mr. H. McPherson ; Mr. Saiyid Wasi Ahmad ; Mr. M. S. Das.*]

*10A The Hon'ble Mr. H. McPherson then moved that the word "or" be omitted after the figures and letter "13B" in line 1 of clause 62 (*a*), and that the words "or under any law previously in force" be inserted after the figures and letter "13C" in the same line of the same clause.

The sub-clause, therefore, to run as follows, namely :—

"(*a*) registered under section 13A, 13B or 13C, or under any law previously in force, as sub-proprietor or tenure-holder, or"

He said :—

"I proposed this amendment in the separate list, because I thought it might meet a difficulty anticipated by the Hon'ble Rai Sheo Shankar Sahay Bahadur.

"The point is that we provide in clause 62 for a receipt being valid when it is granted by a sub-proprietor or tenure-holder duly registered under clause 13A, 13B, or 13C, or duly recorded as such in a record of-rights. The small point occurred to us that, between the preparation of the record-of-rights and the commencement of this Bill, there may be cases of registration under Act X of 1859.† It is to provide for these cases that I propose this amendment."

The motion was put and agreed to.

Clause 65.

151. The Hon'ble Mr. Saiyid Wasi Ahmad moved that the word "shall" be substituted for the words "may, at the discretion of the Court" in lines 1 and 2 of clause 65 (*2*).

He said :—

"My object in suggesting this amendment was to insure that all such notices might be received by the landlord, so that no excuse could be made afterwards that he did not receive any such notice."

The Hon'ble MR H. MCPHERSON said :—

"Sir, I object to this amendment It may not be convenient in every case to serve notices by registered post. It may be much more convenient to serve them by hand or by other methods. There is no reason why we should tie down the Collectorate offices to any particular form of service."

The motion was then put and lost.

Clause 67.

The following motion was, by leave of the President, withdrawn :—

152. The Hon'ble Mr. M. S. Das to move that the words "whether tenure-holder or raiyat" be inserted after the word "*bajiaftidar*" in lines 1 and 2 of clause 67.

153. The Hon'ble Mr. H. McPherson moved that the words "a *chandnadar*" be inserted after the word "rates" in line 2 of clause 67.

He said :—

"Sir, no provision is made in the Bill, as it stands, for the procedure to be followed in recovering arrears of rent from *chandnadars*, although they have now been classed as tenants. As their rents have been fixed for the term of the revenue settlement, and as they are practically on the same footing as *thani* raiyats, I propose that they be added to the enumeration in clause 67 of tenants whose holdings are liable to be sold in execution of rent decrees."

The motion was put and agreed to.

---

* This amendment was taken from the list of "fresh amendments" which was laid on the table at the meeting of the 20th March. (*See* the second foot-note on page 67 of the proceedings of 20th March.)

† *i.e.*, The Bengal Rent Act, 1859.

[*Raja Rajendra Narayan Bhanja Deo; Mr. M. S. Das; Mr. H. McPherson; Rai Sheo Shankar Sahay Bahadur.*]

The following motions were, by leave of the President, withdrawn :—

154. The Hon'ble Raja Rajendra Narayan Bhanja Deo to move that the words "or an occupancy-raiyat" in line 2 of clause 67 be omitted.

155. If motion No. 154 be carried, the Hon'ble Raja Rajendra Narayan Bhanja Deo to move that the present clause 67 be numbered as sub-clause (1) of that clause, and that the following sub-clause be added, namely :—

"(2) Where a tenant is an occupancy-raiyat, he shall not be liable to ejectment in execution of a decree for arrears of rent, if the amount decreed is paid into Court within thirty days from the date of the decree, or, if the Court is closed on the thirtieth day, on the day upon which the Court reopens."

Clause 68.

156. The Hon'ble Mr. M. S. Das to move that the words "whether a tenure-holder or raiyat" be inserted after the word "*bajiaftidar*" in line 3 of clause 68.

157. The Hon'ble Mr. H. McPherson moved that the words "a *chandnadar*" be inserted after the words "raiyat holding at fixed rates" in line 3 of clause 68.

He said :—

"This amendment is consequential to amendment No. 153, which I have proposed in dealing with clause 67."

The motion was put and agreed to.

Clause 69.

158. The Hon'ble Rai Sheo Shankar Sahay Bahadur moved that the word "money" in line 1 of clause 69 be omitted.

He said :—

"Sir, this word indirectly introduces a law that rent paid in kind shall bear no interest. There is no justification for this. In many cases the *Bhaoli* rent may be lower than the money-rent, still the landlord will not be entitled to get interest. This law will act as an encouragement to the tenant not to pay his rent in kind. Even if the limitation for such suit be one year, as proposed, it may take the landlord years before he can realize his *Bhaoli* rent. Why should his just dues all the time bear no interest? It is unjust, unfair and inequitable, and the landlords have done nothing to deserve this treatment. I am aware that, under the corresponding section (67) of the Bengal Tenancy Act,* a doubt arises as to whether that section applies to produce-rent, but the remedy lies not in excluding *Bhaoli* rent from this amended section, but in amending the section in such a way as to include *Bhaoli* rent. In any case, there is no justification for this alteration of the Bengal Tenancy Act."*

The Hon'ble Mr. H. McPherson said :—

"Sir, I oppose the amendment moved by the Hon'ble Rai Sheo Shankar Sahay Bahadur, because all the provisions about produce-rents were agreed to by the Orissa zemindars, who were consulted in the matter in 1909. They have also commended themselves to the Orissa Members. They are fair concessions and are justified by the fact that produce-rents are in all cases much higher in incidence than cash rents. All the various concessions about limitation of amount, limitation of period of recovery and exclusion of interest, have been approved by the local people concerned, and I do not see why the Hon'ble Members from Bihar should object to them."

The motion was then put and lost.

* *i.e.*, Act VIII of 1885.

[*Rai Sheo Shankar Sahay Bahadur ; Raja Rajendra Narayan Bhanja Deo ; Mr. H. McPherson.*]

The following motion was, with the leave of the President, withdrawn :—

159. The Hon'ble Rai Sheo Shankar Sahay Bahadur to move that for the words "half the agricultural year" in line 3 of clause 69, the word "period" be substituted.

160. The Hon'ble Raja Rajendra Narayan Bhanja Deo moved that the words "or of the institution of the suit, whichever date is earlier," in lines 4 and 5 of clause 69 be omitted.

He said :—

"Sir, as the law is now, the tenants pay interest either up to the date of payment or up to the institution of the suit, whichever date is earlier. When the suit is instituted and until it is decreed, no interest is paid, and after the decree, only about 6 per cent. is paid. So, if my motion be accepted, the interest, at the rate of 12½ per cent., will continue to run till the payment of the due. This will be a great inducement towards the prompt realization of rent."

The Hon'ble MR. H. McPHERSON said :—

"Sir, I oppose this amendment on the ground that the clause reproduces the existing law and practice, and is the same as in the Bengal Tenancy Act.* The plaintiff puts his full demand, including interest, into his plaint. The suit is then adjudicated upon. Rent suits do not, as a rule, take a very long time to try; the time is usually three or four months, but the period may be longer or shorter, and, in any case, depends much more on the action of the landlord and of the Court than on the raiyat. We think it is desirable that there should be no inducement given to the landlord to prolong the period of adjudication, nor do we think it is right that, while the landlord is taking his time over the case, or the Court is postponing its disposal, interest should go on running against the raiyat. The Court has power, under another provision of the Bill, to decree damages if it thinks that the conduct of the raiyat deserves special condemnation. I do not think that sufficient reason has been shown in support of the addition proposed by the Hon'ble Member, and I therefore oppose it."

The motion was then put and lost.

Clause 70.

161. The Hon'ble Raja Rajendra Narayan Bhanja Deo moved that the word "shall" be substituted for the word "may" in line 4 of clause 70 (*1*).

He said :—

"Sir, in Orissa, even up to 1907, the Courts used to allow damages in suits for arrears of rent when it was proved to the satisfaction of the Court that the tenants had either refused or neglected to pay their rent, and that without reasonable or probable cause. But since the amendment of the Bengal Tenancy Act* in 1907, probably in no case have damages been allowed. So, under the circumstances, where the tenant has refused to pay rent without any reasonable cause, if the word "shall" be substituted for the word "may," damages will be awarded in such cases."

The Hon'ble MR. H. McPHERSON said :—

"Sir, I cannot accept this amendment, because I think we ought to leave the question of damages to the discretion of the Court, which hears all the circumstances of the case. We do not want to convert our Courts into machines. We should leave them a certain amount of discretion. By substituting the word "shall" for "may" you would deprive them of their existing discretion I therefore oppose the amendment."

The motion was then put and lost.

* *i.e.*, Act VIII of 1885.

[*Raja Rajendra Narayan Bhanja Deo; Rai Sheo Shankar Sahay Bahadur.*]

The following motion was, by leave of the President, withdrawn :—

162. The Hon'ble Raja Rajendra Narayan Bhanja Deo to move that the words "These damages, if awarded, as well as the amount of rent and costs decreed in the suit, shall carry interest at the rate of twelve *per cent.* per annum from the date of decree until payment thereof" be inserted after the words "as it thinks fit" in line 7 of clause 70 (*1*).

Clause 71.

163. The Hon'ble Rai Sheo Shankar Sahay Bahadur moved that clause 71 be omitted.

He said :—

"This clause deals with produce-rent. Drastic changes are made in the present Bill with regard to the recovery of *Bhaoli* rent. In the first place, the Bill makes it illegal for the landlord to recover more than half the gross produce of the land. Secondly, it lays down that no interest on any account shall be payable in connection with *Bhaoli* rent, and thirdly, it provides that one year's, instead of three years', limitation shall apply to *Bhaoli* rent. The *Explanation* states that, in estimating the value, the Court shall be bound to do so according to the rates at the time of harvest. All these provisions are new and do not find a place in the existing law. There is no justification for the changes. No reason has been assigned why these drastic provisions are necessary in the case of Orissa zemindars, and not in the case of the zemindars of the other parts of the province. All the innovations made by this clause are objectionable. The first part, limiting the share of the landlord to one-half, is apparently made to discourage the *sanja* system in Orissa, which corresponds with the *mankhap* or *manhunda* system in Bihar. I may be permitted to draw the attention of my Hon'ble friends from Bihar to page 7 of paper No. 1, where Mr. Levinge says that the matter is important as, "whatever is decided now may be taken as a precedent in connection with the treatment of *mankhap* rents in Bihar." They must not, therefore, think that they are not affected by this legislation. Sir, I do not see why there should be any objection to *sanja* rents. I have heard it often said by tenants that, next to money-rent, they prefer the *sanja* or *mankhap* rent. It is to all intents and purposes a money-rent. It does not fluctuate, it does not leave room for dispute or dissensions. The tenants prefer it because, under this system, they can cut and harvest the crops at their convenience, without interference from the landlord or his agents. In theory, the *adhbatai* or *dhalibag* system is good, but, in practice, it is the source of some trouble to the tenant. He cannot do anything without the landlord's *siman* or other servants being deputed to get the crops divided. These men must not only be fed but must be paid something. So long as the crops are not actually divided, the tenant cannot take away any portion of his share without his landlord's consent. No such difficulty arises under the *mankhap* or *sanja* system. The tenant has absolute control over the entire crop. He knows what he has to pay, and, above all, he is independent of the landlord's agents. The only difference between money and *sanja* rent is that one is payable in money and the other is payable in kind. When I say that tenants prefer the *sanja* system, I assume that the amount of grain payable by them is a fair proportion of the gross outturn. If it is not fair, it must cause hardship, but this applies to money-rent also. For if a money-rent is not fair, it too must cause hardship. If you are satisfied that, in Orissa, *sanja* rent is disproportionately high, the remedy does not lie in the indirect legislation you propose, but in taking power to fix a fair and equitable rent. But there is no satisfactory evidence that *sanja* rent is too high. Mr. Levinge says he has not inquired as to how far *sanja* rents are oppressive, but he adds that he has heard no complaints in regard to them. If this is so, why should you condemn this system? The effect of the legislation you propose will be that, in bad years, the landlord will get less than what he would be entitled to under the *sanja* system, and, in good years, he will not be entitled

[*Maulvi Saiyid Muhammad Fakhr-ud-din.*]

to more than the *sanja* rent fixed. Mr. Levinge justly observes (at page 7 of his letter, dated the 28th November last), with reference to this provision, "that it would be entirely one-sided, for it would give the raiyat the benefit of a bad year while conferring no corresponding benefit on the landlord in a good one." But, Sir, I go a step further. I show that, by this provision, you sow a seed of discord between the landlord and tenant. What is the practical effect of this legislation? It is this, that the landlord would naturally resent payment to him of a smaller rent than he is entitled to under the contract. The tenant, on the other hand,—even when his crops are good,—under the advice of the village tout, will refuse to pay his just debts and will take away the whole crop. The landlord will go to Court. As the crops are already cut, there is no tangible evidence as to what was the yield. There will be hard swearing on both sides, from which it will be difficult to find out the truth, and the Court will have to decide the case on its own surmises, for it is difficult to get reliable evidence as to what amount of crop was yielded in any particular field in any particular year. This dispute between the landlord and the tenant will continue from year to year. The lawyers will have to be fed, the Court *amlas*, from the process-server upwards, will have to be pacified, and both the tenants and landlords will be ruined. Sir, in your solicitude for the welfare of the tenants, do not give them an indefinite law under which they will remain in constant feud with their landlords, for that is sure to cause the extinction of the tenants more often than of the landlords. Give them a simple law under which they may live in peace with their landlords, and may have as little chance of litigation with them as possible. I have already dealt with the question about payment of interest. There is no reason why the landlord should not have a return for the use of his money by the tenants. Then, as regards three years' limitation, you think that this is for the benefit of the tenant. You think that the landlords, to increase their hold on the tenant, do not sue till their claim is very heavy and cannot be discharged by the tenant. This is your idea. My experience, however, is otherwise. There are very few landlords who allow their money to remain with the tenants in the hope of increasing their habilities. All landlords are anxious to realize their dues at the proper time, and, if they do not bring a suit at the end of each agricultural year, it is not to increase the liability of their tenants, but out of regard for the interest of the tenants and for fear of the expensive character of your Law Courts. Every landlord knows that when he has to go to Court, he, as a rule, loses at least 30 per cent. of the principal money. The transfer of jurisdiction from the Civil Court to the Collector may be of some benefit, but will not make any appreciable difference in the cost. Nothing has been shown to the effect that the landlords of Orissa have misused the provision of three years' limitation. I strongly object to this innovation, both in the interest of landlords and in the interest of the tenants. Successive rent suits, year after year, should be discouraged and not encouraged. The *Explanation* is also startling. The effect of this *Explanation* is that, even if the tenant does not pay his rent at the proper time, the landlord will not get the price of the grain which was prevalent at the time of payment, but that which was prevalent at the time of the default of the tenants, and that too without interest. Instead of punishing the guilty party, the defaulter, you punish the landlord. One would have thought that the price calculated should be either that obtaining at the time of the harvest or that obtaining at the time of payment, whichever was most to the advantage of the landlord. Sir, look at this clause from any point of view, and you find that it it is exceedingly objectionable, and I therefore move that it be expunged altogether from this Bill."

The Hon'ble Maulvi Saiyid Muhammad Fakhr-ud-din said:—

"I beg to support the amendment moved by the Hon'ble Rai Sheo Shankar Sahay Bahadur. The proposed amendment has been fully discussed, but I beg to submit, Sir, that it is purely an innovation, for if, under a certain agreement between the landlord and the tenant, more than half the gross produce has hitherto been paid, there is no reason why this should be cut down. Of course, even in Bihar, it has been generally found that what was payable over and above half the produce constituted an illegal cess commonly known as *abwab*. Then again,

[*Mr. H. McPherson.*]

the landlords are not entitled to realize their arrears unless they go to Court before the end of the agricultural year next following that for which the rent was claimed to be due. This is also a new provision. Why should you have such a provision? Why should a landlord be forced to bring his suit in so short a time? He may not be in a position to do so. There is, in the existing law, a period of three years during which the suit is to be brought, but here the period is cut down to one year. If the tenant chooses to pay the money within one year, the landlord will have no objection to receiving it, so there is no reason why the period of limitation existing in the present law should not be adhered to. Further, the *Explanations* added to the clause are similarly objectionable, as the Hon'ble Mover of the amendment has already pointed out. I need not take up the time of this Council by discussing all these points again. But I would submit that you are here enacting a new provision altogether which finds no place in the existing law; that you are apparently giving an undue advantage to the tenants, and indeed offering an inducement to them to withhold their *Bhoali* rent, seeing that they will neither have to pay any interest, nor even the landlord's half share of the real produce. Over and above that, in cases of petty and poor landlords, there will be the risk of limitation. With these observations, I support the amendment proposed by the Hon'ble Rai Sheo Shankar Sahay Bahadur."

The Hon'ble Mr. H. McPherson said:—

"Sir, I oppose the amendment. The Hon'ble Member who has proposed this amendment, and the Hon'ble Member who has supported him, have been talking very much more from a Bihar point of view than from an Orissa point of view. They have been keeping one eye on Bihar, and closing the other entirely to the local conditions of Orissa. The provisions of the Bill on the subject of produce-rents must be considered together. They represent an arrangement which was regarded as fair and equitable by all Orissa landlords who were consulted, and they are in accordance with local custom. The one-half limit is the almost universal practice in Orissa, where the produce is divided, at the time of harvesting, in equal portions between the landlord and the tenant. There appears, therefore, to be no reasonable objection to our laying down one-half as the maximum share for the landlord. Then as regards the question of limitation. Produce-rents are always collected, or ought always to be collected, on the spot at the time when the crop is harvested. That being so, there is no reason why we should allow the landlord to sue for this form of rent up to three years. We have reduced the period of limitation to one year. In practice, this means that the suit need not be brought until at least one more harvest has been reaped by the raiyat. If, for any reason, the landlord has not received his share of the previous year's crop, then, if the year that follows is a prosperous year, the raiyat will be able to make good the previous year's deficit. There is no reason why the matter should be left open for three years. The ordinary period of limitation for a cash-rent is three years, and no hardship arises when a raiyat is sued at one time for three years' arrears, because the cash-rent rarely represents more than one-sixth of the produce; but the case of a produce-rent is entirely different, for, if the raiyat is sued in the fourth year for arrears of rent, he will be sued, as a rule, for one and-a-half times the produce of the year in which the suit is brought. What we want to do is to compel landlords and tenants to adjust their accounts, as regards produce-rents, at the time of harvest or as near as possible to the time of harvest. We do not want the account kept open until it is impossible for the raiyat to clear it. As I have already said, these proposals have been approved by the Orissa zamindars, and there is no reason why we should not accept them. We are not dealing now with Bihar, where, in my experience, I have known cases in which as much as 27 seers out of every 40 is taken by landlords. We are not legislating for a state of affairs like that. We are legislating for people who are satisfied to follow an equitable arrangement, an arrangement whereby one half of the produce is taken as rent. I have so far said nothing about *sanja* rents, but I do not think it is necessary to make any special provision for them, or desirable to exclude them from the operation of the clause. If the *sanja* be a heavy rent, it should be discouraged. If it be a small rent, say, one-fourth of the average produce, then the clause will hardly ever apply to it.

It will not apply to it unless you have less than an eight-anna crop, and that will not be often. It will perhaps be argued that, as the raiyat gets off with a small proportion of his crop in a good year, the landlord should be allowed to realize the full *sanja* rent in a bad year, but we know that, in actual practice, when a very bad year occurs, and there is either no crop at all or only a four-anna crop, the full amount of the *sanja* is never exacted. No material hardship is inflicted on the landlord because the *sanja* rent has been included in these provisions. If the landlord does find that any hardship occurs, he has a very simple remedy. He has only to go into Court under the provisions of section 41 of the Bengal Tenancy Act* and ask that a fair and equitable cash-rent be fixed instead of the *sanja* rent. With the rent so fixed, he will be on the same footing as the landlord of an ordinary cash paying tenant. He will be able to receive his rent in full and to sue for arrears of three years."

The motion was then put and lost.

164. The Hon'ble Raja Rajendra Narayan Bhanjan Deo moved that the words "when the rent of any land is taken by appraisement or division of the produce, or partly in cash and partly in kind," be substituted for the words "where the rent of any land is paid in kind, or on the estimated value of a portion of the crop, or partly in one of those ways and partly in another or partly in one of those ways and partly in cash" in lines 1 to 4 of clause 7.(*1*).

He said:—

"Sir, both this amendment and No. 168 are intended to exclude *sanja* from the operations of this clause, but as the Hon'ble Member in charge has already said he would not exclude *sanja*, I do not think there is any use in pressing this amendment. I will withdraw it."

The amendment was then, by leave of the President, withdrawn.

165. The Hon'ble Babu Hrishikesh Laha moved that the words "or any interest on such rent, or to recover any arrear of such rent by suit, unless the suit is instituted before the end of the agricultural year next following that for which the rent is claimed to be due," in line 7 to 10 of clause 71(*1*) be omitted.

He said:—

"The period of limitation fixed for the recovery of produce-rent, as fixed by sub-clause (*1*) of this clause, is only one year, whereas the period of limitation fixed for the recovery of money-rent is three years, though rent means 'whatever is lawfully payable or deliverable in money or in kind by a tenant to his landlord on account of the use or occupation of the land held by tenant' (see sub-clause (*17*) of clause 3 of the Bill). The reason assigned for the difference in the periods of limitation for the recovery of arrears of rent, paid in cash or in kind, in paragraph 35 of the Statement of Objects and Reasons, is that 'the landlord lets the lean years pass and waits for a fat one. He can easily prove the condition of the crops just reaped, while evidence as to the previous crops is necessarily weaker, and he expects to induce the Court to decree the rent of all the three years at the same rate.' As I said in my note of dissent, the reason appears to be neither cogent nor founded upon any principle. It totally ignores the duty of a person to discharge his obligation, when, under the law, it is incumbent upon him to do so. If a tenant, under the law, is bound to pay his rent, either in money or kind, he must pay that rent without waiting for any demand from his landlord, and it is on this principle that the law awards interest or damages, when an arrear is found due from a tenant. Why should a landlord be taken to task when the tenant fails to discharge his legal obligation? If a tenant who pays produce-rent does not deliver the produce as it falls due, he must take the consequences of the law upon himself. The period of limitation, that is one year, which has been prescribed for the recovery of arrears of rent in kind, with a view to benefit the tenant, would probably be harassing to the tenant himself, by reason of the fact that he is likely to

* *i.e.*, Act VIII of 1885.

[*Mr. H. McPherson; Babu Hrishikesh Laha; Raja Rajendra Narayan Bhanja Deo; Rai Sheo Shankar Sahay Bahadur.*]

lose the sympathy and kindness of the landlord, who, as a rule in Orissa, is always ready to suit his convenience, and to wait for the payment of the arrears due till a prosperous year. On the other hand, the landlords also would be harassed by being compelled by law to institute suits against their tenants just after the rent has fallen due, while the cost of the suit would be very heavy, and this the poor tenant will have to pay. No one, therefore, would be benefited by this clause except the lawyers and the Government, as litigation would increase to an alarming extent, and the tenant would be at the mercy of pettifogging touts and *mukhtars*. This clause is also objectionable on the ground that *sanja* rent, which is a fixed produce-rent, has been included in it, and no exception has been made in its favour."

The Hon'ble MR. H. MCPHERSON said:—

"Sir, I oppose this amendment, for the reasons which I have already given in discussing the previous amendments of the same clause. I should like, however, to explain to the Council, by an example, what the meaning of the one year 'limitation' really is. Let us take a rice crop that has been cut in January of the present year 1912. Then, if the raiyat did not make that division of the crop which he ought to have made on the ground at harvest-time, an arrear falls due. The limitation provided in this clause gives the landlord until the 15th April of the year 1913 to put in his suit for arrears. He must, that is, put it in before the end of the agricultural year following that in which the rent became due. As the agricultural year ends about the middle of April, the landlord has thus about fifteen months in which to recover arrears of rice rents. He can afford to wait till the crops of the following year become ripe for harvest. We thus really give him two years and not one year. I would also remind the Council that the landlords of Orissa have the right of private distraint. If they do not collect their rents in one year, they can distrain the next year's crops. In my opinion, we provide quite enough facility for the recovery of produce rents, which should be recovered in the year in which the crops are grown, and not at some distant date."

The motion was then put and lost.

The following motion was, by leave of the President, withdrawn:—

166. If motion No. 165 be carried, the Hon'ble Babu Hrishikesh Laha to move that clause 71 (*2*) be omitted.

167. The Hon'ble Mr. H. McPherson moved that the word "sub-section" be substituted for the word "section" in line one of the Explanation to clause 71 ( ).

He said:—

"This is purely a verbal amendment, the necessity for which has been pointed out by the Secretary."

The motion was put and agreed to

The following motions were, by leave of the President, withdrawn:—

168. If motion No. 164 be not carried, the Hon'ble Raja Rajendra Narayan Bhanja Deo to move that the following be added after clause 71 (*3*):—

"(*3*) Nothing in sub-section (*1*) or sub-section (*2*) shall apply to a produce-rent which is fixed in quantity. The landlord shall not be entitled to any interest on such rent."

Clause 76.

169. The Hon'ble Raja Rajendra Narayan Bhanja Deo to move that clause 76 be omitted.

170. The Hon'ble Rai Sheo Shankar Sahay Bahadur to move that the words "unless and until the transfer has been duly registered as required by section 25A" in lines 4 and 5 of clause 76 be omitted.

[*Mr. Saiyid Wasi Ahmad; Mr. Kerr.*]

Clause 78.

171. The Hon'ble Mr. Saiyid Wasi Ahmad to move that clause 78 be omitted.

Clause 79.

172. The Hon'ble Mr. Saiyid Wasi Ahmad to move that the words "or makes the land unfit for cultivation" be inserted after the words "landlord's property" in lines 3 and 4 of clause 79 (5).

Clause 82.

173. The Hon'ble Mr. Saiyid Wasi Ahmad moved that clause 82 be omitted.

He said:—

"Sir, I beg to move that clause 82 be omitted. Clause 82 runs thus: 'A non-occupancy raiyat shall be entitled to construct, maintain and repair a well for the irrigation of his holding, with all works incidental thereto, and to erect a suitable dwelling-house for himself and his family, with all necessary out-offices; but shall not, except as aforesaid and as hereinafter provided, be entitled to make any other improvement in respect of his holding without his landlord's permission in writing.'

"Now this is a right that is going to be given to a non-occupancy raiyat, and, apart from placing him on the land for the purpose of agriculture, you are going to give him a right to build a house for himself and also for the members of his family with all necessary out-offices. I do not know what out-offices a tenant may require, but I take an imaginary case of a non-occupancy raiyat who has just taken a settlement of, say, about two bighas of land, and it so happens, Sir, that he may have ten children, and he goes to the landlord, and says, 'Look here, I want to build houses for myself and also for the members of my family,' and in this way he takes, say, about two or three cottahs of land for building purposes alone, and then he starts his cultivation. It is quite possible that that man may be ejected from the holding the very next year or the year after. Now, the procedure contemplated here is that the non-occupancy raiyat is to get not only the right of building dwelling-houses for himself and the members of his family, but, if he is ejected, the further right to receive compensation from the landlord for all the constructions and buildings that he may have made during his stay. Well, I submit that it will be very hard on the landlord if a raiyat is allowed to build a house, and if then, after a short stay, the zamindar has to pay the raiyat compensation for his buildings on ejecting him. It may not work so hardly in the case of permanent tenants or occupancy tenants, who always live on the land; but this is a case in which a non-occupancy raiyat is going to get this right, and I submit, Sir, that cases may arise in which it will result in this, that the tenant will take a settlement and build his houses; and if, after a year or two, the landlord wishes to eject him, he will be obliged to pay him compensation. The occupancy tenant thus practically becomes a sort of settled raiyat of that land. Take another case in which a tenant gets a settlement of only ten bighas of land, and pays a rent of twenty rupees to the landlord; if, after one year, the landlord is asked to pay compensation of Rs. 200, which he will not readily do, the result will be that, in certain cases, the landlord will be forced to allow the tenant to continue on that land. For these reasons I submit, Sir, that this clause ought to be omitted."

The Hon'ble MR. KERR said:—

"It is much to be regretted, Sir, that the framers of the Bengal Tenancy Act* had not the advantage of the Hon'ble Member's legal acumen to assist them in their labours. But these labours were completed 27 years ago, and I would suggest to him that we really cannot go into all the fundamental principles which lie at the bottom of the tenancy law of the Province. Apparently,

* *i.e.*, Act VIII of 1885.

the word "out-offices" has frightened the Hon'ble Member, and brought to his mind the idea of carriage-houses, motor-houses, and things of that kind; but if the Hon'ble Member will so far waive his dignity as to go to any village and look at the non-occupancy raiyats' houses and surroundings for himself, as we poor officials are in the habit of doing, he will see that there is nothing to be alarmed at, even if the raiyat *has* ten children. His amendment would have the effect of depriving the non-occupancy raiyat of the right, which he has at present, to make an irrigation well and other such petty improvements, and to provide a suitable dwelling-house for himself and his family. As a rule, he is an extremely poor person, with a very small holding, and the Hon'ble Member need not be frightened that he will spend an extravagant sum on his well or on his house, so as to make it difficult for the landlord to pay compensation. Had I but the good fortune to show the Hon'ble Member some of these non occupancy raiyats' dwelling-houses, I almost think I might persuade even him to accept my view. In any case, I submit, Sir, there is no reason to alter the provisions of the existing law which give non-occupancy raiyats this very small right; and if they were a more important class, I should say that they ought to be given greater privileges. As it is, they are a very small, poor and unprosperous class, and there is no reason for curtailing such petty privileges as they at present possess. I therefore oppose the amendment."

The motion was then put and lost.

Clause 83.

174. The Hon'ble Raja Rajendra Narayan Bhanja Deo moved that the words "two years" be substituted for the words "twelve months" in line 2 of clause 83 (3).

He said:—

"Sir, in clause 83 only 12 months are allowed to a landlord to register any improvements that might have been made. I think this period ought to be extended to two years, as proposed, because these improvements ought to be encouraged by Government, and the landlords should not be debarred from the right of registration of any such improvements. So I propose, Sir, to substitute two years for twelve months in line 2 of clause 83(3)."

The Hon'ble Mr. Kerr said:—

"I do not think there is any reasonable ground for this amendment. Under the clause, which we are considering, a landlord who makes an improvement must apply, within 12 months after it has been made, for its registration, that is, if he wants to use the improvement as a ground for enhancing the raiyat's rent. The Hon'ble Member would have this period extended to two years. Now, it is very important in connection with improvements to get on record as early as possible the facts which it is necessary to have registered. Everybody knows that, very soon after an improvement is made, doubts begin to arise as to whether it is an improvement, or whether it could possibly have cost so much as the landlord says. Questions of this kind can only be decided if inquiry is taken up at a reasonably short period after the improvement has been completed. To deal with those inquiries after a period of two years would very often frustrate the whole object of the registration of improvements. There is absolutely no reason why a landlord who has made an improvement should not apply for registration directly after it is made. He has brought about the improvement himself, and he knows its cost and all particulars about it. There is therefore no reason to allow him to delay for two years in applying for registration, and such delay could only result in imperfect information being registered and in giving unnecessary opportunities for disputes as to the facts which have to be registered. I therefore oppose this amendment."

The motion was then put and lost.

[*Raja Rajendra Narayan Bhanja Deo; Mr. M. S. Das; Mr. Kerr.*]

Clause 87.

The following motion was, by leave of the President, withdrawn:—

175. The Hon'ble Raja Rajendra Narayan Bhanja Deo to move that the words "or the proprietor of an estate" be inserted after the word "holding" in line 2 of clause 87 (*1*).

176. The Hon'ble Mr. M. S. Das moved that the words "or the proprietor of an estate" be inserted after the word "holding" in line 2 of clause 87(*1*).

He said :—

"I do sincerely hope that the Hon'ble Member in charge will see the reasonableness of this proposal. The clause, as it stands, only covers the case of a tenure-holder when he is making an acquisition. But there might be cases where the proprietor wants to make an acquisition for public purposes, and it might be that the tenure-holder in an estate, for instance the *mokadam*, does not want to acquire. There might be cases where it is not to the interest of the tenure holder to acquire. The proprietor cannot acquire a portion of a piece of land belonging to his tenure-holder, though, could he do so, he might thereby confer a benefit on the public. Therefore, I hope that this amendment will be accepted by the Government."

The Hon'ble MR. KERR said :—

"The effect of clause 87 of the Bill is that *raiyati* land can only be acquired for public and semi-public purposes by the immediate landlord of the holding. The Hon'ble Member's amendment would have the effect of enabling a superior proprietor to acquire land for this purpose. This would introduce a wholly unnecessary complication. If the proprietor divests himself of his interests in favour of a tenure holder, he ought not to be allowed to come in during the currency of the tenure and to take away from a raiyat land which formed a part of the tenure when he gave the lease. To allow a superior proprietor to come in like this would only cause troublesome confusion and dispute. A superior proprietor can very well wait until the term of the tenure is over before acquiring land for any of the purposes mentioned in the clause. I must therefore oppose the amendment."

The Hon'ble MR. DAS said :—

"I must say that I fail to see the reasonableness of the argument advanced by the Hon'ble Mr. Kerr. He has told us that a superior landlord should not be allowed to acquire land which he let out to a tenure-holder during the currency of the tenure. But, as a matter of fact, we find that Government, the supreme landlord of all, acquires land which belongs to its subjects, for purposes of public utility. Suppose a road is to be constructed, and that it will run along the whole length of an estate. The tenure-holder happens to be the person whose tenure covers one-fourth of the estate. The zamindar's proposal is that the road should run along the whole length of the estate; but the Hon'ble Mr. Kerr says that this should not be allowed. But if the Government wanted it as a work of public utility, I do not think the Hon'ble Member would oppose it. I did not expect that amendments like this would be opposed. But I suppose any suggestion coming from a non-official Member must be opposed."

The Hon'ble MR. KERR said :—

"The last suggestion is surely unworthy of the Hon'ble Member. He is doubtless carried away by his enthusiasm, but, when he is calmer, I trust he will remember that many suggestions made by non-official members in regard to this Bill have been accepted by Government."

The Hon'ble MR. DAS continued :—

"I ask that my motion may now be put."

The motion was then put and lost.

[*Raja Rajendra Narayan Bhanja Deo; Mr. Kerr; the President; Mr. M. S. Das.*]

The following motions were, by leave of the President, withdrawn :—

177. If motion No. 175 be carried, the Hon'ble Raja Rajendra Narayan Bhanja Deo to move that the words "or proprietor" be inserted after the word "landlord" in clause 87 wherever it occurs

178. The Hon'ble Raja Rajendra Narayan Bhanja Deo moved that the word "a" be substituted for the word "the" in line 3 of clause 87 (*1*).

179. The Hon'ble Raja Rajendra Narayan Bhanja Deo moved that the words "for excavating a tank for the supply of drinking-water or" be inserted after the words "such as the use of the land" in lines 6 and 7 of clause 87 (*1*).

He said :—

"It is very necessary to put in these words. Though the words "for the good of the holding" appear in the clause, still the sense is restricted by the words "for a village road or embankment." The Collector, when dealing with cases under this clause, might think that tanks are not contemplated thereby. The excavation of tanks is very necessary for drinking purposes. Such excavation may not always, however, be required for charitable or religious purposes; it may be needed for sanitation."

The Hon'ble MR. KERR said :—

"I do not think that the words proposed by the Hon'ble Member are very necessary, because the excavation of a tank for the supply of drinking-water would surely, in most parts of the country, be treated as being for the good of the holding or tenure or estate in which the land is comprised, and the Bill already provides for works being undertaken for this purpose. If, however, the Council desires to have these words inserted, I see no harm, and I should be prepared to advise Government to accept this amendment. But the actual wording must be changed. The matter may be left to the Secretary to the Council."

The PRESIDENT said :—

"The Hon'ble Member would do well to move his amendment on Saturday* in a form acceptable to the Hon'ble Member in charge. He should consult the Secretary."

The motion was accordingly postponed.

The following motions were, by leave of the President, withdrawn :—

180. The Hon'ble Raja Rajendra Narayan Bhanja Deo to move that the words "for any such purpose" in line 10 of clause 87 (*1*) be omitted.

181. The Hon'ble Mr. M. S. Das to move that the words "and to the landlord when he is a tenure-holder or a raiyat" be added at the end of clause 17(*1*).

182. The Hon'ble Mr. M. S. Das to move that the words "or to the tenant and such tenant's landlord, as the case may be," be inserted after the word "tenant" in line 1 of clause 87 (*2*).

Clause 90.

183. The Hon'ble Raja Rajendra Narayan Bhanja Deo moved that the words "in his own right" be inserted before the words "to cultivate his holding" in line 3 of clause 90 (*1*).

He said :—

"The clause, as it stands, leaves ground for collusion with a view to defraud the zamindar. Many cases may arise where neither the transferor nor the transferee might pay rent, although the transferor holds the land of the transferee as an under-raiyat. The proposed amendment will be a penal

* *i. e.*, on the 23rd of March, the next date of meeting.

provision to insure the safety of the property on the application for recognition of transfer. And this will prevent collusion between the transferor and the transferee."

The Hon'ble Mr. Kerr said:—

"The object of this amendment is apparently to limit the rights of a raiyat to sub-let his land or to give a mortgage with possession. No reason has been given for this serious limitation of the powers of an occupancy raiyat. The effect would apparently be, if any raiyat finds it inconvenient for a short period to cultivate his land himself, or if a raiyat died and his widow could not cultivate the land herself, that she would have to abandon it. This would obviously be very unfair, and there is no justification for this curtailment of the existing rights of the raiyat. I must therefore oppose this amendment."

The motion was then put and lost.

The following motion was, by leave of the President, withdrawn:—

184. The Hon'ble Rai Sheo Shankar Sahay Bahadur to move that the words "for his own benefit" be inserted after the word "person" in line 4 of clause 90 (*l*).

185. The Hon'ble Mr. M. S. Das moved that the words "member of his family or by his under-raiyat" be substituted for the word "person" in line 4 of clause 90 (*l*).

He said:—

"Sir, the clause, as it stands, leaves the zamindar in darkness as to the persons who may be employed for cultivating his land. All that my amendment seeks is to restrict such cultivation to the members of the raiyat's own family or to his under-raiyat. It is all right when members of a raiyat's own family cultivate the land. There is certain, in that case, to be no dispute and no attempt to defraud each other. That is the object of my amendment, and I do not wish to take up the time of the Council any longer therewith."

The Hon'ble Mr. Kerr said:—

"Mr. Das' amendment does not go so far as that of the Hon'ble Raja Rajendra Narayan Bhanja Deo, which has just been objected to. Mr. Das would apparently allow sub-letting to an under-raiyat, but he would not recognise cases where a raiyat temporarily gave a mortgagee possession of his land, or temporarily lent it to another person for the purpose of cultivation."

The Hon'ble Mr. Das said:—

"I am willing to recognise mortgaged land."

The Hon'ble Mr. Kerr said:—

"If we are going to deal with the matter in this way, we shall be kept here all day thinking of possible cases which ought to be recognised. I do not think this would be practicable.

The clause, as it stands, is purposely wide so as not to interfere with the existing powers of the raiyat to dispose of his lands. I see no reason to narrow it, or to impose any restrictions on the existing powers of raiyats, and I therefore oppose this amendment."

The motion was then put and lost.

186. The Hon'ble Mr. M. S. Das moved that clause 90 (*g*) be omitted.

He said:—

"The sub-clause should be omitted, for it is practically unnecessary. If a zamindar takes forcible possession of a holding, the raiyat can always go to the Law Court. This sub-clause pre-supposes a state of things which is very

[*Mr. Kerr; Mr. M. S. Das; Rai Sheo Shankar Sahay Bahadur; Mr H. McPherson.*]

different from the actual facts. It pre supposes stringent relations between the landlord and his tenant which do not exist. It takes for granted that the zamindar is always trying to take possession of lands which belong to the raiyat and declaring them to be abandoned, and that therefore the zamindar should be called upon to serve a notice Now, take the case when there has been a flood or famine, and the raiyats have gone away from their holdings, and the zamindar does not know whether they will return or not In such a case, it should be quite unnecessary for the zamindar to give notice to the Collector before he takes possession of such lands. I object to this sub-clause, simply on the ground that it supposes a state of things which does not exist at all. Legislation, as we have been told, should be based upon actual experience, and not upon hypotheses"

The Hon'ble MR. KERR said:—

"This amendment of the Hon'ble Member would destroy a safeguard which was considered necessary in the Bengal Tenancy Act,† and has been in force in Bengal for the last 27 years. Anybody who knows anything about the mufassal and the relations of many landlords with their tenants, will recognise at once that it would be extremely dangerous to allow landlords to treat a raiyat's holding as abandoned, without going through the formality of serving a notice through the Collector. It is really a safeguard for the landlord. Good landlords can, by this means, safeguard themselves from the risk of being treated as trespassers. This sub-clause is really in the interest both of the raiyats and landlords, and I would urge the Council to reject this amendment."

The Hon'ble MR. DAS said:—

"I do not see what and whose interests are safeguarded. The matter now stands thus: if the zamindar takes forcible possession of another's land, he will be guilty of trespass under the Indian Penal Code †† But if he serves a notice, then he is not liable to be prosecuted in a Court for trespass. So really you are not safe-guarding anything. While you say you are helping the raiyat, you are not helping him at all; you are keeping a loophole open The raiyat might justly say "save me from my friends."

The amendment was then put and lost.

The following motions were, by leave of the President, withdrawn:—

187. The Hon'ble Mr. M. S. Das to move that the words "from the date of publication of notice" in line 5 of clause 90 (2) be omitted.

Clause 91.

188. The Hon'ble Rai Sheo Shankar Sahay Bahadur to move that the words "save as provided in sections 12A, 13B, 13C and 25A" in lines 1 and 2 of clause 91 be omitted.

189. The Hon'ble Rai Sheo Shankar Sahay Bahadur to move that the words "save as provided in sub-section (2) of section 25A" in lines 3 and 4 of clause 11 be omitted.

Clause 91.

*11A. The Hon'ble Mr. H. McPherson, with the permission of the President, then moved that, for clause 91, the following be substituted, namely:—

"91. A division of a tenure or holding, or distribution of the rent payable in respect thereto, shall not be binding on the landlord, unless it is made with his express consent in writing, or with that of his agent duly authorised in that behalf:

Division of tenancy not binding on landlord without his consent

† *i.e.* Act VIII of 1885.

†† *i.e.* Act XLV of 1860.

* This amendment was taken from the List of "fresh amendments" which was laid on the table at the meeting of the 20th March (*see* the second foot-note on page 87 of the proceedings of 20th March).

[*Mr. Saiyid Wasi Ahmad; Rai Sheo Shankar Sahay Bahadur.*]

Provided that, if there is proved to have been made in any landlord's rent-roll any entry showing that any tenure or holding has been divided, or that the rent payable in respect thereof has been distributed, such landlord may be presumed to have given his express consent in writing to such division or distribution."

He said:—

"The amendment as printed in the separate paper of "fresh amendments" has a slight mistake in it. In the second line, the word "thereto" should be read as "thereof." This amendment is part of the arrangement come to regarding the redrafted transfer clauses to which I referred yesterday, and is merely a reproduction of section 88 of the Bengal Tenancy Act *."

The motion was put in the altered form and agreed to.

The following motion was, by leave of the President, withdrawn:—

Clause 96.

190. The Hon'ble Mr. Saiyid Wasi Ahmad to move that clause 96 be omitted.

191. The Hon'ble Rai Sheo Shankar Sahay Bahadur moved that the words "the District Judge may on the application, in case (*a*), of the Collector, and, in case (*b*)," be substituted for the words "the Collector may of his own motion or on the application" in line 6 of clause 96.

He said:—

"Sir, a change of considerable magnitude has been proposed to be made in the existing law with regard to the appointments of common managers. It is proposed to transfer these cases from the jurisdiction of the District Judge and High Court to that of the Collector and Commissioner. I admit that this alteration is proposed with the best of motives. But I venture to think that a closer examination of the proposed change will convince Your Honour and the Council that it is of a far-reaching effect and should not be made. It affects the very existence of the landlords of joint estates and tenures. The first legislation on this subject was made in 1812, when, by Regulation V of 1812, powers were given to Zilla Courts to appoint competent men to manage the property of joint undivided estates. To deprive a person of the right of the management of his property was a serious matter and could only be taken under very extraordinary circumstances and with proper safeguards. The safeguards in the law of 1812 were that action could only be taken in cases of disputes causing (1) inconvenience to the public, and (2) injury to private rights. The other and most important safe-guard was that the jurisdiction vested in the Court of the Zilla Judge, which could act only on the motion of the Revenue authorities or of any one interested in the estate itself, and not on its own initiative. This provision about the appointment of common managers was considerably enlarged when the Bengal Tenancy Act* was passed, but no change of jurisdiction from the Judicial to the Executive was ever suggested, contemplated or made. The result has been that Zilla Judges, under the superintendence of the Sadar Dewani Adalat and High Court, have exercised this jurisdiction for over one hundred years. It is now proposed, in the present Bill, that the jurisdiction should vest in the Collector under the superintendence of the Commissioner, and not in the District Judge and High Court as hitherto. I may say, in passing, that, in this respect, the condition of Orissa is on the same footing as that of other parts of the Provinces of Bengal and Bihar, and I do not see why Orissa, so far as this matter is concerned, should be treated differently from other parts of the province. I look on this proposed change with great alarm, and my fear is that a provision like this will place all the co-owners of estates and tenures in Orissa in a most

* i.e., Act VIII of 1885.

[*Rai Sheo Shankar Sahay Bahadur.*]

dangerous position. For it will lead to most disastrous consequences to them, and they and their property will incur the risk of being placed in charge of common management more often and more largely than is either good for them or for the country. Hitherto, if any dispute existed between them and their co-owners, causing inconvenience to the public, the Collector, and, in case of injury to private rights, the person interested, had to move the District Judge, who, after going through the matter, might or might not appoint a common manager. In case he did appoint, any party aggrieved could come up to the High Court for redress. Hereafter, in Orissa, the Collector will take the initiative and act as a Judge. If he hears from the Police, or from the Settlement office, or in a private conversation with any person that there exists any dispute between co-owners, not necessarily causing inconvenience to the public but causing injury to private rights (which all disputes do), he can, without waiting for a complaint from the aggrieved party, at once take action and call upon the co-owners to appoint a common manager; and if they do not appoint a common manager, he himself can appoint a common manager, and thereupon the co-owners not only lose the management of their estate, but, (if the Bill is passed into law, as it stands), they cannot transfer or mortgage their rights, or even apply for partition. If this clause 96 is passed as it stands, I sincerely pity the positions of all co-owners in Orissa, from big zamindars down to the holders of the smallest tenure. They will be in constant dread of the Executive head of the district. They can, at any time, be deprived of the control of their property. It must not be supposed that I am saying anything against the Collectors, for whom, as a body, I have the greatest respect, regard and admiration. But, Sir, there is something which we lawyers call "judicial interest" or "judicial bias." Human nature is human nature and one of the elementary principles of jurisprudence is that you cannot be both prosecutor and judge. You set at naught the first principle of law by making the Collector both prosecutor and judge. He can take action on his own motion in case of any dispute with which the public peace is not concerned, and he can decide the matter himself. It is placing in his hands a power which should never be placed in the hands of any person, however great confidence you may have in him. It is not only necessary that justice should be done, but it is absolutely necessary that the people should have no misgivings about the tribunal to which they have to go for justice. Then let us see what is the reason for the change. It is said that the Collector can keep better supervision over the managers than the District Judge can do. I admit that this is so. I admit that, as a rule, the management of estates cannot be properly supervised by the District Judge in the same way as by the Collector. You do not, however, propose to give to the Collector the supervision of management only, but you propose to give him the jurisdiction to take the initiative and to decide, as a judge, as to whether a common manager should be appointed. This difficulty of management by the District Judge has been felt before. We find it was felt so far back as 1827, for Regulation V of 1827* recognised that management by the District Judge was less satisfactory than management by the Collector. It therefore authorised the District Judge, in cases where he decided to appoint a manager, to issue a precept to the Collector directing him to manage the property. This provision was replaced by a provision in the Bengal Tenancy Act,† section 96, empowering the Local Government to nominate a person as manager for any area; and when the manager is so nominated, the District Judge is bound, under that Act, to appoint him as common manager. If the question of management only is concerned, the difficulty might be obviated by the Local Government exercising the powers under this section. But there is no reason why the power of taking the initiative should vest in the Collector.

My last objection is that the matter has not been properly considered. I am aware that Mr. Adami, the District Judge of Cuttack, supports this provision, but he supports it simply on the ground of the better supervision of management by the Collector. He has not one word to say about the desirability or otherwise of adopting a line of action which would make the Collector both prosecutor and judge. Except Mr. Adami, no other District

* i.e. the Bengal Attached Estates Management Regulation, 1827.

† i.e., Act VIII of 1885.

Judge has been, I believe, consulted, and, above all, the Hon'ble Judges of the High Court, who have exercised jurisdiction in this matter for over one hundred years, have not been referred to. Is it fair to them? Is it, to say the least, courteous on your part to oust them from a jurisdiction they have exercised for over 100 years without hearing from them as to what they have to say on the subject? When the effect of the Bill is properly understood, it is bound to create alarm. I therefore propose that the present law need not be disturbed."

The Hon'ble BABU JANAKI NATH BOSE said:—

"Sir, this amendment has been very eloquently proposed, and the objections taken are on various grounds, but the change in the law that is here proposed is based upon actual experience. I can inform the Members of this Council that this system of managing certain estates through a common manager has been in vogue in the district of Cuttack for about 20 or 22 years. I must admit that the Judge who first took over the charge of one estate rather liked the work. He took an interest in the particular family whose estate came under his management. But I am in a position to say that no other succeeding Judge ever liked this kind of work, and, generally speaking, there have been several reasons for this. The first is that the Judge is busy with judicial work, and has hardly any time to devote to the management of the estates; the second reason is that he has not the machinery at his command with which to work; and there is another reason, Sir, namely, that these estates are generally embarrassed estates, and, either defaults are made in payment of Government revenue, or the properties have been mortgaged and are brought to sale in Civil Courts, and these occurrences give a considerable amount of trouble to the District Judge. Further, the Judge does not like to have to write to the Collector to postpone a revenue sale, or to call upon his subordinate courts to adjourn execution sales. Mr. Adami is, it will be observed emphatic in his opinion that he has not been able to work this system well, and that it is preferable that the common manager should be under the Collector. I may also say, Sir, that, at the Conference held in 1909 by Mr. Maddox, most of the gentlemen consulted were in favour of the transfer of jurisdiction to the Collector. But the Hon'ble Member who proposes this amendment says that the Collector would be situated as both prosecutor and judge. I fail to see any difficulty of that kind in this matter. On the other hand, if there is any inconvenience to the public or injury to private rights, the Collector is in a better position to ascertain these facts than the District Judge, who would depend simply upon such second-hand evidence as may be produced before him; and I have noticed, Sir, that though Collectors have seemingly many sins to atone for as regards their relation with the owners of embarrassed estates, they are always very sympathetic with the members of these ancient embarrassed families. Again, not only has the Judge furnished us with this opinion, but local opinion also is certainly the same. There is no harm in my telling the Council that Mr. Levinge, the present Commissioner, is of opinion that the jurisdiction should be transferred to the Collector. There is, further, another reason in favour of the change, and that is that the common manager's accounts ought to be examined periodically at least. But I am sorry to say that, though several estates have been under the management of the District Judge for several years, yet, owing to the want of qualified officers—I do not of course refer to the Judge, for he has no time for these duties—the accounts have never been audited, and no one knows how they stand. For this and other reasons it has been thought fit to change the jurisdiction and to place these estates under the Collector.

"As regards the curtailment of the power of co-sharers, I can also say from personal experience that this too is very necessary; for otherwise, though at first all the co-sharers may think fit to place their estates in the hands of the Collector, some of them may change their minds afterwards, and by their conduct make good management impossible. For this and other reasons, this change in the law is required; and I think that, apart from the vague general remarks to which the Hon'ble Mover attaches much weight, there is nothing in the local conditions, or in the experience actually gained by competent men which shows that this change is unnecessary and ought not to be made.

[*Babu Janaki Nath Bose.*]

At this stage, the Council was adjourned to Saturday, the 23rd March, 1912, at 11 A.M., the President intimating that the debate on amendment No. 191 would then be proceeded with.

A. W. WATSON,

Offg. Secretary to the Bengal Legislative Council.

CALCUTTA,

The 27th March, 1912.

B. S. Press—17-5-1912—4010J—450—G. A. and others.

Proceedings of the Legislative Council, assembled for the purpose of making Laws and Regulations under the provisions of the Indian Councils Acts, 1861 to 1909 (24 & 25 Vict., C. 67, 55 & 56 Vict., C. 14, and 9 Edw. 7, C. 4).

THE Council met in the Durbar Hall at Belvedere on Saturday, the 23rd March, 1912, at 11 A.M.

Present:

The Hon'ble SIR FREDERICK WILLIAM DUKE, K.C.I.E., C.S.I., Lieutenant-Governor of Bengal, sub. *pro tem.*, *presiding*.

The Hon'ble MR. F. A. SLACKE, C.S.I., *Vice-President*.

The Hon'ble RAJA KISORI LAL GOSWAMI.

The Hon'ble MR. R. T. GREER, C.S.I.

The Hon'ble MR. D. J. MACPHERSON, C.I.E.

The Hon'ble MR. E. W. COLLIN.

The Hon'ble MR. C. J. STEVENSON-MOORE, C.V.O.

The Hon'ble MR. E. P. CHAPMAN.

The Hon'ble MR. B. K. FINNIMORE

The Hon'ble MR. J. H. KERR, C.I.E.

The Hon'ble MR. H. L. STEPHENSON.

The Hon'ble MR. T. BUTLER.

The Hon'ble MR. S. L. MADDOX, C.S.I.

The Hon'ble MR. G. W. KÜCHLER, C.I.E.

The Hon'ble MR. L. F. MORSHEAD.

The Hon'ble SIR FREDERICK LOCH HALLIDAY, KT., M.V.O., C.I.E.

The Hon'ble MR. J. G. CUMMING, C.I.E.

The Hon'ble MR. C. H. BOMPAS.

The Hon'ble MR. C. E. A. W. OLDHAM.

The Hon'ble MR. H. MCPHERSON.

The Hon'ble BABU JANAKI NATH BOSE.

The Hon'ble MAHARAJA BAHADUR SIR PRODYOT KUMAR TAGORE, KT

The Hon'ble SIR FREDERICK GEORGE DUMAYNE, KT.

The Hon'ble KUMAR SHEO NANDAN PRASAD SINGH.

The Hon'ble BABU BHUPENDRA NATH BASU

The Hon'ble RAI SITA NATH RAI BAHADUR.

The Hon'ble LT.-COL. G. GRANT-GORDON, C.I.E.

The Hon'ble SIR BIJAY CHAND MAHTAB, K.C.S.I., K.C.I.E., I.O.M., Maharajadhiraja Bahadur of Burdwan.

The Hon'ble BABU KIRTANAND SINHA.

The Hon'ble RAJA RAJENDRA NARAYAN BHANJA DEO

The Hon'ble BABU DEBA PRASAD SARBADHIKARI.

The Hon'ble MR. J. G. APCAR.

The Hon'ble MR. NORMAN McLEOD.

The Hon'ble MR F. H. STEWART, C.I.E.

The Hon'ble MR GOLAM HOSSEIN CASSIM ARIFF.

The Hon'ble DR. ABDULLAH-AL-MAMUN SUHRAWARDY.

The Hon'ble MR. SAIYID WASI AHMAD.

The Hon'ble MAULVI SAIYID MUHAMMAD FAKHR-UD-DIN

The Hon'ble BABU HRISHIKESH LAHA.

The Hon'ble MAULVI SAIYID ZAHIR-UD-DIN.

The Hon'ble RAI SHEO SHANKAR SAHAY BAHADUR.

The Hon'ble MR. MADHU SUDAN DAS, C.I.E.

The Hon'ble RAI BAIKUNTHA NATH SEN BAHADUR.

The Hon'ble BABU MAHENDRA NATH RAY.

The Hon'ble KHAN BAHADUR MAULVI SARFARAZ HUSAIN KHAN.

The Hon'ble MR. DIP NARAYAN SINGH.

The Hon'ble BABU BAL KRISHNA SAHAY.

[*Mr. H. McPherson.*]

THE ORISSA TENANCY BILL, 1912.

Clause 96—contd.

THE Council proceeded with the consideration of Amendment No. 191 relating to clause 96, which had been partially debated at the meeting of the 21st March.

The Hon'ble MR. H. MCPHERSON, in resuming the debate, said :—

"This Amendment (No. 191), and the twenty which succeed it, all relate to the provisions included in the Bill on the subject of common managers, and the main object of attack is the proposed transfer of jurisdiction from the District Judge to the Collector. The first point to note is that all the amendments have been proposed by Hon'ble Members from Bihar. There is not a single amendment suggested by any of the Hon'ble Members who represent Orissa, and it may thus be inferred that the provisions of the Bill have the entire approval of the latter. The proposed innovation in the law is not one which is being thrust upon an unwilling people by Government. It is an innovation which was sought by the people themselves, and Government was content to place itself in their hands and accede to their wishes. If Mr. Maddox's report of April 1909 be referred to, it will be seen that the zamindars, whom the Hon'ble Member has solemnly warned of the threatened invasion of their cherished rights of property, were themselves the first to suggest the change. They were dissatisfied with the working of the Bengal Tenancy Act* sections. Mr. Maddox translated their suggestions into proposals which were laid before the Orissa Committee of 1909. The Committee, with the exception of one common manager, who was also a pleader, one mukhtear and one zamindar, were strongly in favour of transferring the jurisdiction of the Judge to the Collector, "not only," I quote from Mr. Maddox's report, "because the Collector is familiar with the agricultural conditions of the district and controls all revenue matters (the area for the most part being temporarily settled), but also because he is more likely to appoint competent persons as managers and to supervise their work effectively."

"The proposals which were incorporated in the Bill were circulated to the three associations who may be said to represent the landlord's interests in Orissa. Not only did all three associations approve of the proposals, they suggested that Government should go further in the direction of strengthening the hands of the common manager and curtailing the powers of the co-sharers during the term of management. They wanted Government, in fact, to introduce some of the provisions of the Chota Nagpur Encumbered Estates Act†. Let me now read what the District Judge of Orissa wrote on the subject when the Bill was circulated to him :—

"The changes proposed in clauses 96 to 103 of the Bill are strongly to be advocated. There are at present six estates under common management under the District Judge of Cuttack, one of them being the Bhingapur estate, about the largest estate in Orissa. All, except one, of these six estates may be said to be *in extremis*.

"It is impossible for the District Judge, in the course of his duties, properly to supervise the common managers; he has no regular staff for the purpose and cannot afford the time to go out on tour.

"Furthermore, suits are constantly coming before him on appeal which, properly speaking, he should not hear, being, in a way, an interested party. Parts of the estates are constantly being put up for sale in execution of decrees, and it falls upon the District Judge to petition the subordinate courts to give time; at the same time he has to call for explanations from the lower courts for the delays incurred in completing execution cases.

* i.e., Act VIII of 1885. † i.e., Act VI of 1876.

[*Mr. H. McPherson.*]

"The Collector can far better supervise the management, having experienced Deputy Collectors under him who can give the estates their individual attention.

'All the properties of the co-proprietors should be brought under the common manager. There has been difficulty, for instance, in selling off some house property of the proprietors of the Bhingapur estate in the towns of Puri and Cuttack. Such property is not at present covered by the Bengal Tenancy Act. I would suggest the inclusion, with necessary modifications, of the provision of sections 3, 10, 11, 17 and 18 of the Chota Nagpur Encumbered Estates Act,† 1876."

"The suggestions of the local associations and of the District Judge were considered carefully in Select Committee. The Committee were unable to accept all the suggestions, because it is not the business of a Tenancy Act to provide for the preservation of encumbered estates. The details of clause 101, where they differ from those of section 98 of the Bengal Tenancy Act,*—and these also are the subject of attack by the Hon'ble Members from Bihar—represent the extent to which the Committee considered it safe in a Tenancy Act to admit the suggestions and accede to the wishes of the local associations.

"We have now the very curious situation that when Government has embodied in a Bill provisions which are in compliance with the unanimous and urgent representations of the people of Orissa, the whole scheme is violently assailed by representatives of Bihar. Sir, it does not bode well for the newly-strengthened connection between Bihar and Orissa that what may be called the senior partner in the new concern should adopt this attitude towards the junior member of the firm. I would ask the Hon'ble Members from Bihar to look at the question in this light and to abandon their opposition to this portion of the Bill.

"The Hon'ble mover has laid much stress on the point that the control of the working of common managers has hitherto rested with the Hon'ble High Court, and has endeavoured to excite us by holding up the new provisions to execration as an invasion of their ancient jurisdiction But, Sir, in the management of disorganized estates of all kinds, there has always been close co-operation between the Judicial and the Executive. There has been no jealous rivalry. When we have shown that the existing system has not worked well in Orissa and that there is a universal desire to adopt, instead, management under the control of the Collector, no reasonable objection can be urged to the change. What the Hon'ble Member loses sight of, or does not fully appreciate, is the closeness of the connection which exists between an Orissa Collector and the landed interests of his district. This discussion, indeed, throws an interesting side-light on the difference that has been made to Orissa by the fact that its land settlements are temporary. The Collector is the trusted friend of the proprietary body, and the holy horror with which the Bihar Members affect to regard these proposals is not intelligible to the people of Orissa.

"There is one point, Sir, in the Hon'ble mover's remarks which has arrested my attention. He is afraid of the unlimited discretion that is conferred on the Collector to appoint common managers. It is no more unlimited, of course, than the discretion of the District Judge under the Bengal Act; for, in this matter, the District Judge exercises executive functions, and there is no appeal to the High Court against his orders; but the Hon'ble Member fears that the powers will be more extensively used by the Collector, who may act more frequently on his own initiative. Although the working of the provisions has been subjected to the revisional powers of the Commissioner by clause 102A, which has no counterpart in the Bengal Act, there is, I admit, some possible danger that the provisions of the Bill may be overworked by an indiscreet or over-enthusiastic Collector. Government has no desire to

* *i.e.*, Act VIII of 1885. † *i.e.*, Act VI of 1876.

[*Rai Baikuntha Nath Sen Bahadur*]

throw unnecessary work on its mufassal officers. It is true that the successor of an officer who had overworked the sections might disencumber himself of the burden under section 102, but it is not always easy and not always satisfactory to get rid of a responsibility. I therefore propose, Sir, with your permission, to suggest that no appointment of a common manager under clause 98, or release of a property under clause 102, shall be made without the sanction of the Commissioner. The effect of these additions will be to steady the working of the provisions, by affording less play to the idiosyncrasies of individual officers.

"I propose to move the necessary amendments when the clauses in question come up for discussion.

"As to the Hon'ble Mover's remark that only the District Judge of Cuttack was consulted as to the changes contemplated by this clause, I would remind him that there is no other superior judicial officer in Orissa to consult. It would have been useless to refer the Bill to Bengal or Bihar Judges with no knowledge of Orissa conditions. And as for the High Court, well, the Hon'ble Judges do not welcome promiscuous references in regard to proposed legislation; and the Council will remember that when, in the past, a reference has been made to them in connection with a proposed measure, they have not infrequently declined to offer any opinion as to its merits or otherwise. It can hardly be doubted that a similar reply would have been received had the Hon'ble Court been approached in regard to a purely administrative provision such as clause 96."

The Hon'ble RAI BAIKUNTHA NATH SEN BAHADUR said:—

I rise, Sir, to support the amendment. Under the Bengal Tenancy Act* the appointment of a common manager, his powers and duties, are provided in sections 93 to 100 of the Act. The District Judge has the right to appoint a common manager, on the representation of the Collector, under certain circumstances, *i.e.*, when there is inconvenience to the public, and on the representation of co-owners when there are injuries to private rights. The District Judge has the power of appointment, and the High Court has the power to make rules for the working of this chapter. Now a departure is sought to be made, and the Collector-Magistrate is to take the initiative, and he can himself appoint a manager. The rules which are provided under the Bengal Tenancy Act* to be framed by the High Court, are, according to the provisions in this Bill, to be framed by the Local Government, so that practically it comes to a question of the divesting of the jurisdiction of the District Judge and of the High Court, and of vesting the same jurisdiction in the Collector and in the Local Government. This departure, therefore, is a very important one; it affects the principle, it changes the forum, and, unless a good and strong case is made out, the Council, I think, should not make this new departure. It has just now been observed by the Hon'ble Member in charge of the Bill, that the Orissa people do not object to the suggested provision, but that the Bihari Members have taken upon themselves to move the amendment. It does not matter much whether the amendment comes from the Bihari Members or from the Orissa Members: no doubt importance should be attached to the statement made by the Hon'ble Member that this measure will not be forced upon an unwilling people, if, as he says, the people of Orissa are willing to accept it. Suggestions by the local associations have been referred to, and they suggest that the powers should continue in the District Judge. It has further been observed by my hon'ble friend, Babu Janaki Nath Bose, that the District Judge is so much overworked in his judicial duties that he cannot afford to give proper time to considerations of questions which arise in this connection, and he has further observed that he has not at his disposal the machinery which the Collector has. Now if the District Judge has not sufficient time, I think that the Collector-Magistrate, with his multifarious work, has got still less time. That is no ground. As regards the machinery, I may speak from personal

* *i.e.*, Act VIII of 1885.

experience. There is an estate called the Patikabari estate, which is under the management of a common manager appointed by the District Judge of Murshidabad. The sheristadar of the Judge is a most competent person; he supervises the work, and the work is going on very satisfactorily. So that I am not prepared to admit that there is any force in the argument that the Judge has no time or that the Judge has no machinery to supervise work of this nature. Then comes the question as to why especially large powers are intended to be given to the common manager under the new Bill. Why should there be this divesting of authorities and powers from the judiciary and vesting of it in the executive? Sir, I beg to lay stress on the fact, with every deference to the opinion which has just now been expressed by the Hon'ble Member in charge of the Bill, that the people—the public at large—have the greatest confidence in the administration of the law by a judicial officer and ultimately by the High Court. They look upon action taken for administrative purposes by the executive authorities with some degree of misapprehension; rightly or wrongly they do so. Here the co-owners have got vested interests, and I find from the provision made in clause 101 that the co-owners will not have the right, without the sanction of the Collector, even to apply for partition of their estates; that is depriving them of vested rights. When there is a common manager appointed, a dissolution of the common management takes place *ipso facto* by a partition of these estates. Now, under the Bengal Tenancy Act,* a co-owner is not under any disabilities in regard to applying for partition, nor is he bound to take the previous sanction of the District Judge or anyone else; he can at once apply for a partition, and then the common manager disappears altogether. Now, a greater power is being sought to be given to the common manager, and, when there is a common manager appointed, a co-owner will not have the right to apply for partition without the sanction of the Collector. This places him under an enforced artificial disability; this deprives him of a vested right. Has a good case been made out for this departure? I need not enter into the reasons for the misapprehensions which will arise. I do not say that every Collector or every Magistrate will act in a perverse way—far from that; but Magistrate-Collectors in their over-zeal, in consequence of mistakes connected with the appointment of the common manager, may take action which may result in serious injury to co-owners. I will take a simple case for illustration: Sir, suppose there are ten co-sharers, and one of them dies, and a dispute arises between the heirs of that particular co-owner—the nine co-owners being in perfect amity one with another—and suppose the heirs of the tenth co-owner fight among themselves, and thus bring inconvenience on their neighbours, or, in other words, that there is a likelihood of a breach of the peace. The whole property is then brought under a common manager. Such a case is certainly possible—it might take place—if the Collector were trying in his own way to take up the case of the heirs of the tenth of the estate. I will not dilate on this point, because cases are conceivable in which this clause may be worked in an oppressive way. To avoid all these things, I submit that the law as it prevails in Bengal ought to be adopted; and, being a representative of the people, I may say with some degree of confidence, and with due deference of course to the opinion of the Hon'ble Member in charge of the Bill, that this proposed change in the law will be against the wishes of part-owners and against the wishes of the people. This will not be a popular provision. Government should certainly have consulted representative co-owners before taking a step by which vested rights will be interfered with, and by which the jurisdiction of the District Judge and the High Court will be taken away, and such a measure should be adopted only with the greatest caution. I am aware of the fact that a provision has been made in this Bill for the revisional powers of the Commissioner. Under the existing law there is no right of appeal; though a High Court, of course, could exercise its extraordinary jurisdiction of interference in special cases. No provision for appeal is made in any of the relevant clauses of the Bill, but the Commissioner has been given powers of revision, very likely to safeguard the interests of the co-owners. I do not think that power is sufficient, and I therefore support the amendment.

[*Maulvi Saiyid Muhammad Fakhr-ud din.*]

The Hon'ble MAULVI SAIYID MUHAMMAD FAKHR-UD-DIN said :—

Sir, I rise to support the amendment, and I am very glad to find that this amendment is not only supported by the representatives of the people of Bihar, but also by the representatives of the people of Bengal. Of course, I do not know what the reasons are which led the representatives of the Orissa people not to put forward any amendments with regard to this clause, but we have here to look at the principle of law which we are going to enact. We ought not to judge the utility of a clause from the point of view as to who is proposing an amendment to it, but from that of the merits of the clause, and the amendment should be dealt with independently of any such personal consideration. The remarks and observations made by the Hon'ble Member in charge as regards almost every amendment proposed by Bihar members are quite out of place. Hitherto we had given jurisdiction to the District Judge for the appointment of a common manager with revisional jurisdiction vested in the High Court, and now a big change is proposed to be made in the existing law; the Collector is being vested with the power of appointing a common manager of his own motion even without any application on behalf of the co-owners. If he is satisfied that there is some inconvenience, or that there is a likelihood of a breach of the peace, he may appoint a common manager. Now this measure is no doubt very stringent, and it ought to be applied only in extreme cases and under exceptional circumstances; and hitherto, in order to safeguard the misuse of this power, the District Judge was vested with the power of appointing a common manager on the application of a Collector, or even on the application of a private party. Now it is suggested that the District Judge has not sufficient machinery, and that therefore it is difficult for him to look after the management. We know that, under the provisions of the Civil Procedure Code, the Civil Court has power to appoint a Receiver, and a Receiver has to manage his estate under the supervision of the Civil Judge, and has to submit his accounts to the Judge. And even if we assume that the machinery which the District Judge has got is not sufficient to look after the management of such undivided estates, of course we could provide him with sufficient staff and sufficient machinery, by which he could manage the estates efficiently; but there is no reason why these powers should be vested in the Collector who himself has got manifold business to look after. You do not propose to shorten the work of a Collector, but you are asking him to do additional work. You seemingly forget that the Collector has got Deputy Collectors under him, and that he can efficiently work through them. You can similarly empower a District Judge to employ subordinates—Munsifs—, and I think, in that case, the District Judge would be able to manage an estate more satisfactorily than the Collector. Then we find in the present clause as to the appointment of common managers that some stringent provisions have been made that the co-owners will not be entitled to sell, mortgage or lease any part of their property, nor will they be entitled to move the Collector or the Civil Courts for a partition of their share. Now when such stringent provisions have been made, it is but fair that the District Judge should exercise that power, which hitherto he has enjoyed, of appointing a common manager; for, practically, the Collector will, for the time being, confiscate this estate, and the co-owner will not be entitled to sell, mortgage, or lease his own share, nor will he be entitled to go before the Collector and ask for a division of his own lands, so that he may be free from all these difficulties. He can do these things only with the sanction of the Collector. I beg to submit, Sir, that, having regard to the stringent provisions which are now introduced in the subsequent clauses of this Bill, the existing law should not be changed, and that this power which has hitherto been given to the District Judge should be retained. Under the Bengal Tenancy Act* we find that it is the High Court which has to frame rules as to common managers; now, under your Bill, the High Court will have nothing to do with these matters. Is it fair that you should take away the power of the

* *i.e.*, Act VIII of 1885.

[*Babu Deba Prasad Sarbadhikari.*]

High Court without consulting that body? The landlords will always be at the mercy of the Collector. If the Collector is displeased with any landlord, the latter's estate will be confiscated under the garb of inconvenience to the public or of private right. The Collector will not be under the control of the Civil Court. I am, therefore, sure that this clause will arouse alarm in the minds of the landlords. With these cursory remarks, Sir, I beg to support this amendment.

The Hon'ble BABU DEBA PRASAD SARBADHIKARI said :—

I wish to add, Sir, to the Bengal support for what it is worth. I was not quite prepared for such a large and persistant promulgation of the opinion that whenever "territorial legislation," if one may so call it, comes up before this legislature or any other legislature, there is to be, at least by implication, also a sort of territorial ear-marking of the support afforded by the different sections composing the legislature. That idea has been, earlier in the debate, properly combated in other connections, and whatever application the idea may be conceded to have to matters of technique and details, it would be undesirable to extend it and emphasize it in connection with the larger questions of principle, such as have involved in this clause and in this amendment. The matter has been discussed on the merits at some length, and it is not necessary for me to travel over the same ground that has been covered by other speakers. Reference has recently been made to the Receiver provisions of the Civil Procedure Code,* and reference may be made to other laws under wich the civil court has, under given conditions, power to interfere whenever there is a dispute of the kind contemplated in this clause. At present there is one, and only one, controlling authority with regard to these disputes, and that is the District Judiciary. Apart from the question of the High Court not having been consulted, apart also from the question of the powers of the civil courts having been taken away, not by implication any longer, but overtly, without much of a case having been made out in support of such transfer of power, we have to consider some practical difficulties that are not only likely, but are sure, to arise when there is dual authority of the kind proposed in this Bill. I do not know, Sir, what will happen to the larger powers with which the common manager, or rather the Collector, is proposed to be vested. But supposing those powers are given to the Collector, and supposing there is a desire to avoid the exercise of those powers whenever there is a likelihood or chance of any of the contingencies contemplated in clause 97 arising, the more enterprising co-owner would straightaway rush to the Civil Court and put his suit on the file and ask for the appointment of a Receiver, before anybody has the opportunity of thinking of a common manager. By this clause no doubt, the Collector is given the power of initiative together with those interested. Of course, as has been pointed out, it would be possible for an infinitesimally small owner to harass and annoy his co-owners by invoking the aid of this section. It would be equally possible, however, for him to go to the Civil Court and ask for the appointment of an official Receiver. Now it is possible that in many cases the appointment of a Receiver would not be a blessing after all, and the administration of an estate through a common manager may have advantages which the Receiver is not able to furnish. The average zamindar, having disputes with his co-owners, has not largely availed himself of the opportunities of having a Receiver appointed, but has preferred the channel of a common manager. That has hitherto been the acceptable practice, and should we, without complete justification or more than justification, do anything that will make people think—having regard to the larger powers that I have alluded to—whether it would not be desirable to anticipate things at an earlier stage, and so make it impossible for a common manager to intervene? A sort of perpetuity has been sought to be created later on in the clause by interfering with the powers of alienation and the rights of partition with which neither the Hindu legislature nor the British legislature had

* *i.e.*, Act V of 1908.

thought of interfering hitherto. Having regard to these proposed extensive powers, there is the greatest likelihood of the powers of a Civil Court being invoked before the proper time, and hence your clauses may prove fruitless. It is indeed difficult to follow the Hon'ble Member in charge of the Bill. If there is any opposition to any clause based on the existing Bengal Tenancy Act,* we are told that the law has done well enough for 27 years, why do you seek to interfere with it? The moment one seeks to adhere to the existing Bengal law, exception is taken that the Bengal law is no longer good enough, and reasons are found—and they can always be found when necessary—for making an advance on the Bengal law. We are not persuaded that anything like a clear case has been made out in support of the drastic and far-reaching innovation proposed in these clauses. Because Orissa representatives have not put any amendment forward, it does not follow that they would not like to adopt one that others have suggested, provided that a fair and reasonable case be made out in favour of the amendment. The Bengal Members have exercised a self-restraint which has been conceded to be praiseworthy, by implication, by the Hon'ble Member in charge, in interfering as little with this Bill as possible. The grievance in some quarters indeed is that the Bengal Members have not taken enough interest in this Bill, and it is complained that those, who support the retention of this Bill in this Council, have not taken enough interest in its progress. I wish to assure those who make a grievance of that kind, on behalf of myself and of the other Bengal Members of this Council, that it is not the interest that is lacking; but we do not wish to needlessly hamper the proceedings and waste the time of the Council by taking up ground which others have so well and very properly covered. But when a question of principle arises, I think it is desirable that Bengal should also make its voice heard and its opinion known, and make due contribution towards securing justice for Orissa, even at the risk of forfeiting the hard-earned praise for good conduct attributed to the Bengal Members in regard to their marked self-effacement in this debate.

The Hon'ble MR. MADDOX said:—

I only wish briefly to refer to what the Hon'ble Member in charge of the Bill has mentioned this morning, and that is about my report of April 1909. In that report I showed that it was clearly the wish of the people of Orissa to have these particular provisions, and the benefits to be secured by its provisions were also set forth. I need hardly remind the Members of this Council,—those who come from Bihar and Bengal and have spoken to-day—that the people whom they represent are not in such close touch with the Collector and the Deputy Collector as the people of Orissa are, and therefore it is both reasonable and desirable that these provisions should be administered in Orissa by the Collector and Deputy Collector. Besides this, the District Judge of Cuttack whose jurisdiction extends over all British Orissa, has strongly recommended the adoption of these proposals.

The Hon'ble MR. SAIYID WASI AHMAD said:—

I have an amendment, No. 190, to this clause (96) which is to the effect that the whole clause should be omitted. That amendment was withdrawn by me at the last meeting when I saw another amendment in the name of my friend, the Hon'ble Rai Sheo Shankar Sahay Bahadur, on the ground that I thought that, his amendment being milder in form and also in support of the present law,—which, according to the view of the Hon'ble Member in charge of the Bill, has worked so satisfactorily for the last 27 years,—would be accepted. I find to-day, however, that that amendment has also been opposed, and opposed rather strongly on a different ground altogether. The first ground put forward by the Hon'ble Member in charge of the Bill is that the Orissa Members, whom this clause particularly affects, have not said a word against

* i.e., Act VIII of 1885.

these clauses, but, on the other hand, have supported a change from the present law. I submit, Sir, this is absolutely no ground. As I said on the very first day of the discussion of this Bill, it is not a matter as to who speaks or who takes part in the discussion of a Bill in this Council. The whole thing is whether or not the Bill, as placed before us, is good law. That is the principle that ought to guide every Member in this House, whether official or non-official. Now the changes that are proposed to be made by the introduction of this clause are of such a nature as to affect the very principles of the Bengal Tenancy Act* inasmuch as this clause deliberately changes the jurisdiction of a District Judge, to hand it over to the District Collector. It is needless for me to remind Hon'ble Members of this Council that there is already a cry against any power being vested in executive officers. Under this Bill you have already given enough power to the Collector. You have practically made him—if you pass this Bill into law—the zamindar of his district. He may do what he likes; all the civil suits, all the rent-suits, will be tried and decided by him. He will be directly in touch with the tenants, and will be directly in touch with the villagers, and naturally will also be in touch with the zamindars. I ask you to consider seriously whether the powers that are proposed to be given to him in this Bill as a whole will or will not make him an interested party whenever a question of this nature comes up before him.

Much has been said by the Hon'ble Member in charge of the Bill as to difficulties that have arisen in the case of District Judges when they have to apply as managers of the estates under their charge for postponements in cases pending before Subordinate Judges. Difficulties also have arisen because District Judges have to try civil suits in connection with the management of these very villages, but will these difficulties not arise in the case of District Magistrates, who will be, as I have said, the real zamindars of the whole district? Now, when you propose to make a change in the law, you have first of all to give a clear and solid reason as to why that law should be changed. Two grounds have been given for the proposed change: the first is that a District Judge is already an overworked officer and has no time; the second is that as the Judge will be an interested party, it is not desirable that he should have the management of the estates. Not a word has been said or suggested either by the Hon'ble Member in charge of the Bill, or in the opinions that have been taken on this clause, as to a District Judge being unable efficiently to manage the estate, or as to his being incapable of doing so. All that has been suggested is that he has no time, and I ask you whether it is reasonable to take away his powers, not because he is incapable of exercising them, but because he has not sufficient staff to work under him. If he has not a sufficient number of men under him, give him more men. What will be the result of this clause being passed into law? The estates will be managed by Deputy Collectors, and not by District Magistrates. You are giving power, in effect, to the Deputy Collectors who are already managers under the Court of Wards. I do not wish to suggest that these Deputy Collectors do not manage the Court of Wards well and satisfactorily, but it is for consideration whether you are not going unduly to overburden them and their Collectors, for cases are not wanting in which we know that various District Collectors and their Deputies have complained of overwork.

Thus I submit that there is absolutely no ground why the law should be changed. As to the District Judge being interested in the matter of common management, I submit that in nearly every case that comes under the Civil Procedure Code† he is similarly interested, though he has to sit as a Court of Appeal and decide these cases. The principal thing is that you cannot change a law without giving solid reasons why the law should be changed, especially when you know that not only the people of Orissa, as I presume, but the entire Council—I am talking of course of the non-official Members and the entire body

* i.e., Act VIII of 1885.
† i.e., Act V of 1908.

of people whom they represent—certainly view this change with a great deal of alarm.

Then the next point has not been answered at all, and that is that we are also taking away the powers of the High Court. Why? What is the ground there? Has it been suggested that the High Court is also overworked in spite of our having 19 or 20 Judges? Absolutely no ground has been given as to why you are going to take away their power. You console us by saying that revisional power is given to the Commissioner. What is a Commissioner after all? He is the immediate superior of the Collector. They are both on the executive side of the administration, and we oppose this clause merely on that ground, and we say, "do anything you like, but don't give too much power to the executive authorities in their districts when we have got District Judges and Civil Courts." As my hon'ble friend from Bengal told us just now—and correctly too—we Indians place a good deal of reliance in Civil Courts, and everybody cries and shouts for a High Court. Even we, in the new Province of Bihar, are shouting for one. Why? Simply because we believe—we may be wrong—but we believe that we shall have better justice done in our High Court than at the hands of a District Collector.

Then again, there is one thing to be considered which the Hon'ble Member in charge of the Bill has very frankly admitted. There is also the chance of this power being abused by over-zealous Collectors. Cases are not wanting—I need not give you instances, but those who have been reading the papers for the last two or three years will tell you that there have been cases—where the District Magistrates have gone beyond their powers at times by oppressing the zamindar, if I may be allowed to say so. What will be the result of this new clause? If the District Collector gets annoyed with even a very petty zamindar, he will say "Oh, all right, on my own motion I will take away all the powers you have got. I will not let you enjoy your own property, and what is more, I will place it in my own hands." What is the remedy for that? Nothing save and except certain powers of revision given to a Commissioner. He is in many cases guided by the notes and remarks of his subordinate officers. We don't expect any justice from him, and therefore I assert that this proposed new law is rightly very strongly opposed by everyone concerned.

There is one more point to which I wish to draw the attention of the Council, and that is this: The District Magistrate is to be vested with this power, and he is vested to such an extent that he can initiate proceedings of his own motion. Now what is the meaning of these words "of his own motion?" They require interpretation; but we know their meaning in the Criminal Procedure Code*; under that Act, the Magistrate may also act on the reports of the police. Now, that is a very serious thing to consider. The District Collector, sitting in his district, receives various reports in his capacity as District Magistrate—both confidential and public reports from the police. If the District Magistrate takes the initiative on such reports and calls upon the co-sharer and says, "You had better appoint a common manager, otherwise I will take charge of your entire property," I submit that that would be very hard on the zamindars,—in some cases at any rate. If there is any chance of the section not working satisfactorily in the case of zamindars, I submit that that fact in itself is a very strong ground why the amendment should be accepted by this Council. I, therefore, beg to support the amendment that has been moved by my friend, the Hon'ble Rai Sheo Shankar Sahay Bahadur.

The Hon'ble Mr. Das said :—

I did not intend to speak on this matter, but there has been something of incrimination and recrimination as to what Orissa Members have charged other

* i.e., Act V of 1898.

[*Mr. Kerr.*]

Members with, and as to what should be the duty of Orissa Members. I must confess I did not give any particular attention to the study of this subject of common managers. When the matter was before the Select Committee, a proposal was made to incorporate in this Bill something like the encumbered estates provisions. I remember I objected to that. Then I have heard here that those people who have their estates now under a common manager wish for a change, and I have also heard people say that they would like to have the common management in the hands of the Collector. So far that statement is correct. But I don't think anybody was consulted with regard to the provisions of the Bill as they stand. The discussion now before the Council has brought out certain features,—features which I noticed particularly in the speech of the Hon'ble Mr. McPherson and in the speech of the Hon'ble Member who has just resumed his seat. The Hon'ble Mr. McPherson said that he could imagine an over-energetic—or some such word—Collector, and the last speaker pointed out what might be done by the Collector if the words "of his own motion" were left in the clause. These are matters in which I don't think the zamindars or persons who wish for the change were consulted. At any rate the discussion of this provision in the Bill has brought to light certain dangers. Hon'ble Members of the Council who have experience, more experience than I have, in connection with the working of this provision, have pointed out these dangers. Though I am not in a position to speak from personal experience, I may say this much, that we, Orissa Members, are not prepared to oppose any reasonable amendment. All that we say is that any opinion formed by us is not to be adhered to as persistently as is often done by an Hon'ble Member in charge of a Bill. Of course, Sir, we have been yoked with the senior partner to whom the Hon'ble Member, Mr. McPherson, has referred; in taking a partner for life, one has to consult the wishes of such partner very often before one begins to live in the same house with him or her. Secondly, of course, the experience of the Bengali and Bihari Members is not to be thrown away or slighted by the Orissa Members.

I really regret that I cannot offer any observation based on my personal experience, nor can I claim to have given any particular attention to this subject. I cannot, therefore, express an opinion on the amendment either way.

The Hon'ble MR. KERR said:—

I wish to say one thing with reference to the remarks that have fallen from the Hon'ble Member for the University regarding the Bengal Tenancy Act.* The position of Government with regard to this matter is that we resist attacks on the principles of the Bengal Tenancy Act,* and we say that, in cases where that Act has worked well for many years, a very strong case has to be made out in favour of any change. But this question which we are now considering is not a question of principle. It is simply a question of machinery as to whether these common manager provisions should be worked by the District Judge or by the Collector. There is, moreover, a strong case in favour of a change. The people of Orissa say that the existing machinery is not working well, and I may say here that the Hon'ble Mr. Das is wrong in thinking that this common manager provisions of the Bill were not circulated for opinion. The suggestion for change was first put forward by the Orissa people themselves in 1909, and the detailed provisions of the Bill were circulated to them some time in July or August last and have been under consideration ever since. They were unanimously approved by the Orissa Association and the Orissa public. They have not, of course, seen the comparatively small amendments which were made in Select Committee, but we may certainly take it that the Orissa public have approved the main principles which transfer this function of control from the District Judge to the Collector. The District Judge himself, who works this machinery at present, says that it is not suitable and wants a change. I submit, therefore, that in this comparatively small question of machinery we ought to be guided by the wishes of the local officers

* i.e., Act VIII of 1885.

and the local people and carry the provisions of the Bill as they now are. I do not propose to reply to the disparaging remarks of the Hon'ble Mr. Wasi Ahmad, which appeared to be characterised by singularly poor taste. It is perhaps enough to remind him that, among gentlemen of his profession, there is an adage to the effect that, when you have a particularly bad case, your only chance is to throw mud at your opponents. Such practices may conceivably be useful in a Court of Law, but are hardly worthy of this Council. As to the Hon'ble Mr. Das' consultations with his "future partners for life," I observe from the daily press that they have already begun, and I trust that they may be attended with much happiness to the people whom Mr. Das represents.

The Hon'ble BABU BHUPENDRA NATH BASU said :—

I will deal with the question that has been raised by the Hon'ble Member, Mr. Kerr, first. But before I do so I confess that if this clause was not a clause involving very important principles of administration, I should have taken no part in the discussion, in view of the statement made by the Hon'ble Member in charge of the Bill that "the Orissa people want it." It is because I feel that there is a very serious question of principle involved in the clause that I venture to detain the Council for a few minutes. The Hon'ble Mr. Kerr says that it is a question of machinery. It is, in one sense, but behind that question of machinery is the question of the hand that applies the machinery, that sets the machinery in motion, and here we have the Collector himself setting the machinery in motion and then deciding for himself at a later stage as to whether the machinery should or should not be set in motion. To those Members of this Council who have spent their lives in district work I am afraid to appeal, because naturally they grow up under a belief that whatever they do is always right, but to others who have not had the benefit of that experience I can make a more strenuous appeal. Is it right or is it proper that the person who is ultimately to decide as to whether a common manager should or should not be appointed should be the person who, in the first place, has to set the machinery in motion? That is a simple question to which I ask for a straightforward reply. I see arrayed against me gentlemen who have held high judicial office, and one* whom we may congratulate upon having been recently selected to fill one of the highest judicial posts in this province. I appeal to them, not as a matter of experience with which I shall deal later on, but as a matter of principle, to say whether they would give their high approval to a procedure of this kind. Then, going away from the question of principle and coming to the applicability of the section, is it not quite clear that the experience we have had cannot absolve us from all fear of interference on the part of an over-zealous district officer, though it may be that in Orissa a state of Arcadia exists, and that the happy relations existing there between executive officers and the people have not their counterpart elsewhere in the province, except probably on those carved images on Buddhist temples, where you see the lion and the lamb drinking water from the same vessel in peace and contentment? But apart from that, it may very frequently happen that obnoxious zamindars may be sought to be put down by methods which will not stand the test of judicial procedure. Many of my friends, who have been district officials—I appeal to them—would say that oftentimes they have found, or have felt, that an obnoxious zamindar, (from their point of view in any event), should have been dealt with, if possible, under the Court of Wards Act.† In my own experience, a case did occur, where the zamindar was forced to seek the protection of Government, after a series of prosecutions, by transferring his estates to the Court of Wards.

Under the law as you are going to frame it, wherever any dispute exists between co-owners, which is likely to cause inconvenience to the public or injury to private rights, the Collector can always interfere. I ask, Sir, the

* The Hon'ble Mr. CHAPMAN. | † i.e., Bengal Act IX of 1879

Bengal men, and in that I include the members of the Civil Service as well as my non-official friends,—that is men who have lived in the mufassal and who have experience of the management of zamindaris owned by several proprietors—to say, can they point out to any single zamindari in the whole area of Bengal, Bihar and Orissa, as they now are, where, owing to some disputes between the co-proprietors, some injury to private rights does not often happen, and thus open the door for the appointment of a common manager; and is it intended that the entire province of Orissa should be practically under the zamindari management of the Collector? Would he be able to look after such a huge estate in addition to his other duties? But, it may be said, that it is a state of things which is not contemplated. What is contemplated is the potential power to interfere, and not the actual interference. But this potential power to interfere is a source of great danger. My friend, the Hon'ble Mr. Maddox, calls attention to his report where he says:—"Others ask for an amendment of sections 93 to 100 of the present Bengal Tenancy Act,* so as to bring the procedure both for appointment and control of common managers entirely under the control of the Collector." That is one thing, but the provisions which you are seeking to introduce are quite different.

The Hon'ble MR. MADDOX said:—

May I explain, Sir, that they are detailed in a later paragraph of the same report, paragraph 50, sub-clause 14?

The Hon'ble BABU BHUPENDRA NATH BASU said:—

I have got that part also, and I will deal with it. This is what my friend says on page 57 of his report—

> "The people of Orissa, except the common manager who is also a pleader," (and thereby hangs a tale,) "are in favour of transferring the jurisdiction from the Judge to the Collector. Not only because the Collector is familiar with the agricultural conditions and controls all revenue matters, but also because he is more likely to appoint competent persons as managers and supervise the work effectively."

That I concede. But I shall presently tell the Council that it is possible to secure this without the large departure that you are seeking to make from the existing law.

My friend, the Hon'ble Mr. Hugh McPherson, said, with some degree of appropriateness, that this is a matter in which the people of Orissa alone are concerned, and if they have no objection, why should others, the people from Bihar especially, interfere? Well, this recalls to my mind a recent piece of legislation in this Council, the Improvement Bill of Calcutta, and I should have been very pleased if the fight had been left to us three† on this side and the Hon'ble Mr. Bompas on the other, the rest of the Council abstaining from any discussion or voting; then I think we should not have come off in the sorry plight in which we did on that memorable occasion. But territorial aloofness is a state of things which is not possible in a corporate Council like the one that we have now got, and therefore I think it is right for Bihar Members as well as for ourselves to intervene in this discussion.

My friends are aware that there are provisions in the Code of Civil Procedure‡ under which a property may be brought to sale by the District Judge through the agency of the Collector, and it is quite possible if there is a complaint that Judges have not got sufficient experience in the management of estates or the proper machinery under them, and that these things, *i.e.*, the

* *i.e.*, Act VIII of 1885

† *i.e.*, the Hon'ble BABU D. P. SARBADHIKARI, the Hon'ble MR. APCAR, and the speaker

‡ *i.e.*, Act V of 1908

management of estates and supervision, would be better done by Collectors:—it is quite easy, I say to provide a machinery by which the Judge, after having given an order for the appointment of a common manager, will be able to seek the help of the Collector in carrying out the part that is purely administrative, and which will not interfere with the judicial discretion of the Judge, or take away their powers of interference from the High Court. My friend says that he is going to give us the additional protection of the Commissioner. Far be it from me to say that that is not a protection. I differ from the Hon'ble Mr. Wasi Ahmad in this respect. But I would appeal to Mr McPherson himself to say, what is the extent of that protection? In how many instances and cases like these would the Commissioner be inclined to interfere, because remember, your grounds are so vague, viz, "inconvenience to the public or injury to private rights?" If these two things are established, it is merely a matter of discretion and not of judicial exercise of power, and in how many cases would the Commissioner interfere? Then, Sir, it has been said that some of the Orissa zamindars wanted, if it was possible, to incorporate in the law some of the provisions of the Encumbered Estates Act † for the protection of their estates. That is a feeling with which I can sympathise, but at the same time, as my friend knows, the provisions of the Encumbered Estates Act † cannot be called into existence until the estate has become heavily encumbered. What happens—will my friend say—to an estate in which, for instance, one proprietor is the owner of 15-annas? He is a thoroughly capable proprietor. Another is the owner of a one-anna share. In Bengal and Bihar there are owners of shares which are much more fractional than one anna, and because one of these is incompetent or unruly, the Collector is to have power to interfere and appoint a common manager. This appointment of a common manager by executive order takes away entirely the right of the 15-anna shareholder to the management of his own estate, but that is not all. If that were all, I could understand that it was probably the policy of Government to reduce the zamindars, upon whose co-operation it has often relied, and whose absenteeism has always been criticised, to the position of mere annuitants. But more than that, besides reducing them,—capable men who may have fractional shares in a zamindari,—into the position of mere annuitants, you take away their power of sale, mortgage, gift or lease so that they can in no way deal with any portion of their property for any purpose whatever without the sanction of the Collector. My friend says, why should you fear that the Collector will unjustly withhold his sanction? I have not that fear. I take it that I need not fear. But why, because some fractional part of my estate has got into a state which may necessitate the appointment of a manager, should I be deprived of the ordinary rights of a proprietor over my property, and why should I be compelled to seek the assistance of the Collector, and to be entirely dependent on his favour for the exercise of the commonest rights of property over my own estate? And more than that; not only do you, by an executive order, impose upon me, who may be a proprietor qualified to manage my own estates, this liability, and deprive me of the rights of sale, gift or assignment, but you further impose upon me this state of tutelage for all time until the Collector chooses otherwise. You take away from me the right to have my own share partitioned and given to me separately so that I may exercise the rights of management and of proprietorship over my own property. Is that fair? I do not know what the Orissa zamindars may think of it but I am quite sure that in no other part of India, except the Sonthal Parganas, would any zamindars or proprietors of estates relinquish their rights to property under conditions like these, even if the Collector were a man who would be always infallible. This is a serious innovation and a serious encroachment upon the rights of private property, and I earnestly ask the Council carefully to consider what they are going to do before they vote upon this amendment.

† Act VI of 1876.

[*Rai Sheo Shankar Sahay Bahadur.*]

The Hon'ble RAI SHEO SHANKAR SAHAY BAHADUR said :—

"Sir, we have heard in reply to several of our amendments that the people of Orissa have accepted this, and that there is no ground for the people of Bihar to intervene. Sir, the people of Orissa seem to be very gentle. But I do not know whether all the zamindars of Orissa, either of the permanently or temporarily-settled estates, have in a body, for themselves, their heirs and their assigns, submitted an application to Your Honour that they want this change in the law for the appointment of a common manager. I do not think so. But assuming for the sake of argument that they have done so, shall we be deprived of the right of considering this question? Sir, I have heard of decrees by consent, but I have never heard until now of legislation by consent. In this case, a vital question of principle is involved, and the law, as proposed to be introduced, must stand or fall on its own merits. In considering the question of the appointment of common managers, there are three stages. The first is the stage of giving cognizance to the court in cases of dispute between the co owners and the hearing of the dispute by that court. The second stage is that, when it is found that there is a dispute and that a common manager should be appointed, the Court issues a notice to the joint holders of the estate, calling on them to show cause whether a common manager should be appointed or not; and, if the joint owners do not agree among themselves with regard to the appointment of a certain manager, the Court can itself appoint a common manager. The third stage is that, when a common manager is appointed, the Court has the control and supervision of the management of the common manager. The amendment before the Council, which I had the honour to move, refers to the first stage, viz., where the Court has to take cognizance of the fact as to whether or not there is any dispute, and whether the dispute is of such a nature that it is absolutely necessary that a person should be deprived of the right of management and a common manager appointed. Some of my friends have rather complicated the issue by the introduction of the procedure of the second and third stages. They do not say that the Civil Court, under the superintendence of the High Court, should not have the jurisdiction of taking cognizance of a case and deciding whether there is any dispute or not, or whether it is a fit case for the appointment of a common manager. What they say is this: that a District Judge cannot keep proper control over the common manager, and therefore an amendment in the law is necessary. As I said before, when moving this amendment, so far as I am personally concerned, although I know many are opposed to the views I entertain, I would have welcomed a motion to this effect that the power of taking cognizance and deciding whether a common manager should or should not be appointed should vest in the Civil Court, but that the power of keeping control over the common manager might be given to the Collector. I should have personally no objection to that; but what I seriously object to is this—and this question is a serious one, for it is a question of depriving a man of his right of management—I object that this power of deciding whether there is a dispute and whether a person should be deprived of his right of management should be placed in the hands of the Collector, and that the Civil Court and High Court should be divested of that right. I submit that this change in the law can only be defended if it has been proved that the Civil Court and the High Court have failed to exercise this power properly or have misused this power. Have we got any such proof before us? Can you condemn the High Court without giving it an opportunity for explaining whether it has misused this power? Is that fair? These are my grievances, Sir, and they have not been answered by the Hon'ble Member in charge. I may say that, so far as this amendment is concerned, there cannot be any dispute that the power of taking cognizance and deciding whether a common manager should or should not be appointed should vest as heretofore in the Civil Court under the superintendence of the High Court. Has a case been made out that the Civil Court should be divested of this power, and that this power should now vest in the Collector? I say no."

[*Rai Sheo Shankar Sahay Bahadur; Mr. Saiyid Wasi Ahmad.*]

A division was then taken with the following result :—

Ayes 17.

The Hon'ble Kumar Sheo Nandan Prasad Singh.
" Babu Bhupendra Nath Basu.
" " Kirtanand Sinha.
" Raja Rajendra Narayan Bhanja Dec.
" Babu Deba Prasad Sarbadhikari.
" Mr. Apcar.
" " Golam Hossain Cassim Ariff.
" Dr. Abdullah-al-Mamun Suhrawardy.
" Mr. Saiyid Wasi Ahmad.
" Maulvi Saiyid Muhammad Fakhr-ud-din.
" Babu Hrishikesh Laha
" Rai Sheo Shankar Sahay Bahadur
" Mr Das
" Rai Baikuntha Nath Sen Bahadur.
" Babu Mahendra Nath Ray.
" Khan Bahadur Maulvi Sarfaraz Husain Khan.
" Mr. Dip Narayan Singh.

Noes 25.

The Hon'ble Mr. Slacke.
" Raja Kisori Lal Goswami.
" Mr. Greer.
" " Macpherson.
" " Collin
" " Stevenson-Moore.
" " Chapman.
" " Finnimore
" " Kerr.
" " Stephenson.
" " Butler.
" " Maddox.
" " Kuchler.
" " Morshead
" Sir Frederick Loch Halliday, KT
" Mr Cumming
" " Bompas.
" " Oldham.
" " H McPherson.
" Babu Janaki Nath Bose.
" Sir Frederick George Dumayne, KT.
" Lt.-Col. G. Grant-Gordon.
" Mr. Norman McLeod.
" " Stewart.
" Maulvi Saiyid Zahir-ud-din.

The following members were absent:—

The Hon'ble Mr. Mitra.
" " Rai Sita Nath Ray Bahadur.
" " Maharaja Manindra Chandra Nandi.
" " Maharaj-Kumar Gopal Saran Narayan Singh.
" " Mr. Dutt.
" " " Reid.
" " Babu Braj Kishor Prasad.
" " " Bal Krishna Sahay

The Hon'ble Maharaja Bahadur Sir Prodyot Kumar Tagore and the Hon'ble Sir Bijay Chand Mahtab, Maharajadhiraja Bahadur of Burdwan, abstained from voting.

The result of the division was *ayes* 17, *noes* 25, and the motion was therefore lost.

The following motions were, by leave of the President, withdrawn:—

192. The Hon'ble Rai Sheo Shankar Sahay Bahadur to move that the words "or clause (*c*)" in the penultimate line of the provision to clause 96 be omitted.

Clause 97.

193. If motion No. 190 be carried, the Hon'ble Mr. Saiyid Wasi Ahmad to move that clause 97 be omitted.

194. If motion No. 191 be carried, the Hon'ble Rai Sheo Shankar Sahay Bahadur to move that the words "District Judge" be substituted for the word "Collector" in line 3 of clause 97.

Clause 98.

195. If motion No. 196 be carried, the Hon'ble Mr. Saiyid Wasi Ahmad to move that clause 98 of the Bill be omitted.

[*Rai Sheo Shankar Sahay Bahadur; Mr. H. McPherson; the President; Babu Bhupendra Nath Basu.*]

196. The Hon'ble Rai Sheo Shankar Sahay Bahadur moved that the words "has jurisdiction under the Court of Wards Act* in force for the time being and" be inserted after the word "Wards" in line 3 of clause 98 (*a*).

He said:—

Sir, my ground for this amendment is that the Court, under the Court of Wards Act,* has jurisdiction only if the property consists of an estate or part of an estate paying revenue to Government, and the Act does not confer jurisdiction on the Court to take charge of property consisting of tenures only. These clauses in the Bill deal both with estates and tenures. In order to remove the anomaly, I propose the above words to be added, but I will not press for it if it is not accepted by the Hon'ble Member in charge of the Bill.

The Hon'ble MR. H. MCPHERSON said:—

I do not accept the amendment, Sir. There seems to be a similar provision in the Bengal Tenancy Act.† The word "tenure" appears in section 97 of the Bengal Tenancy Act † in much the same way as it appears here. Section 97 says:—

"In any case in which the Court of Wards undertakes under section 95 the management of an estate or tenure, so much of the provisions of the Court of Wards Act, 1879,* as relates to the management of immoveable property shall apply to the management. The same reference to tenures occurs in section 95."

The Hon'ble RAI SHEO SHANKAR SAHAY BAHADUR said:—

Sir, I do not wish to press this amendment.

The motion was then, by leave of the President, withdrawn.

The following motion was, by leave of the President, withdrawn:—

197. If motions Nos. 191 and 194 be carried, the Hon'ble Rai Sheo Shankar Sahay Bahadur to move that the words "District Judge" be substituted for the word "Collector" in clause 98 wherever it occurs.

The Hon'ble MR. H. MCPHERSON said:—

Sir, may I have your permission to ask for the suspension of the Rules of Business in order to move an additional amendment?

The PRESIDENT said:—

Yes.

The Hon'ble MR. H. MCPHERSON said:—

I beg to move, Sir, that after the words "in any case" in sub-clause (*b*) of clause 98 the words "with the previous sanction of the Commissioner"‡ be inserted.

The Hon'ble BABU BHUPENDRA NATH BASU said:—

I would like to know whether this provision would give the party a right of appeal to the Commissioner, or whether there would only be a private communication between the Collector and the Commissioner.

---

* *i.e.*, Ben. Act IX of 1879.
† *i.e.*, Act VIII of 1885.
‡ *See* also p. 230, *post*.

[*Mr. H. McPherson; Babu Bhupendra Nath Basu; Mr. Saiyid Wasi Ahmad; Rai Sheo Shankar Sahay Bahadur.*]

The Hon'ble MR. H. MCPHERSON said:—

Sir, the facts of the case will have to be reported beforehand by the Collector to the Commissioner and, no doubt, the Commissioner will be only too glad to hear what the parties have to say before he passes orders. We may trust the Collector and the Commissioner to do justice in this matter, and not to take action without giving a full hearing to those concerned.

The Hon'ble BABU BHUPENDRA NATH BASU said:—

Would it not be simpler if the power of appeal were given to the parties to the Commissioner in the case of the appointment of a common manager, and as regards the matter of sales, gifts, etc.?

The Hon'ble MR. H. MCPHERSON said:—

There is provided, Sir, the revisional power of the Commissioner, and this, together with the additional words, secures our object. Knowing that the previous sanction of the Commissioner is necessary and that he has revisional powers under clause 102 A, the parties will, no doubt, go to the Commissioner and state their objections, if any.

The motion was put and agreed to.

The following motions were, by leave of the President, withdrawn:—

Clause 99.

198. If motion No. 190 be carried, the Hon'ble Mr. Saiyid Wasi Ahmad to move that clause 99 of the Bill be omitted.

199. If motions Nos. 191 and 194 be carried, the Hon'ble Rai Sheo Shankar Sahay Bahadur to move that the words "District Judge" be substituted for the word "Collector" in clause 99 wherever it occurs.

Clause 100.

200. If motion No. 199 be carried, the Hon'ble Mr. Saiyid Wasi Ahmad to move that clause 100 of the Bill be omitted.

Clause 101.

201. If motion No. 193 be carried, the Hon'ble Mr. Saiyid Wasi Ahmad to move that clause 101 be omitted.

202. The Hon'ble Rai Sheo Shankar Sahay Bahadur moved that the words "in respect of all their joint immoveable property" in line 7 of clause 101 (3) be omitted.

He said—

These words were added by the Select Committee, and it is not clear what they mean. Do they mean that the common manager shall take charge of all the joint property? If so, it is exceedingly objectionable and inconsistent with section 96, where the existence of a dispute is a condition precedent for exercising this extraordinary jurisdiction of depriving a joint landlord of the control of his property. I submit that the Orissa people should not be treated in this respect in a way different from other provinces, and we should not go beyond the Bengal Tenancy Act* in this respect.

* *i.e.*, Act VIII of 1885.

[*Mr. H. McPherson; Babu Janaki Nath Bose; Rai Sheo Shankar Sahay Bahadur.*]

The Hon'ble MR. H. MCPHERSON said :—

This is one of the matters in which we placed ourselves in the hands of the local associations and representatives of Orissa. The clause, as originally drafted, was on the lines of the Bengal Tenancy Act.* Several suggestions were made by the local associations and by the Members from Orissa to strengthen the hands of the common manager in dealing with the joint properties of the people who came under management. This was one of the points in which we were asked to make an addition to the provisions of the Bengal Tenancy Act.* As the addition has been made at the request of the Orissa people, I think it ought to stand.

The Hon'ble BABU JANAKI NATH BASU said :—

Sir, this change has been made in the law chiefly for this reason, that although the common manager takes charge of the estates and other tenures belonging to the co-owners, they may have some house property in a town which properly does not come under the category of an estate or a tenure; hence the fact that the family possess such properties gives rise to various disputes amongst the co-sharers, and such disputes cannot be settled unless the common manager takes over the management of such property also. And there is another reason for this: If it is proposed to sell the houses in the town to liquidate the debts of the family, the common manager is not competent under the existing law to deal with such properties, and the owners themselves will not agree and will not execute a conveyance of these properties so that money may be raised and debts liquidated. These are the chief reasons for the clause, and this is a provision of the law which has been approved of by local opinion.

The motion was then put and lost.

The following motion was, by leave of the President, withdrawn:—

203. If motions Nos. 191 and 194 be carried, the Hon'ble Rai Sheo Shankar Sahay Bahadur to move that the words "District Judge" be substituted for the word "Collector" in clause 101 wherever it occurs.

204. The Hon'ble Rai Sheo Shankar Sahay Bahadur moved that the words "nor shall they, without the sanction of the Collector—

(*a*) by sale, mortgage, gift or lease, assign their share of the property, or

(*b*) apply for a partition of the estate or other property in the Civil Court or under the Estates Partition Act, 1877,"

in lines 9 to 14 of clause 101 (*3*) be omitted.

He said :—

This is another instance of departure from existing law. In the Statement of Objects and Reasons it is stated that opportunity is being taken to revise the law as to managers in other respects also. Reference is made to a decision of the High Court in the case of Amar Chandra Kundu, I. L. R., 31 Calc., page 305, and in consequence of that decision it is suggested that the powers of co-owners should be curtailed. I do not see how the power in a co-sharer to alienate his share can effect injuriously his co-sharer landlords, the management by the common manager, or the tenants of the estate, when the transferee simply steps into the shoes of the co-sharer who transferred his share and all he does is subject to do what the common manager might have done in the due discharge of his duty. It is a serious matter to deprive a landlord not only of his right to manage his property, but also of the right to exercise his

* *i.e.*, Act VIII of 1885.

proprietary right. He is not an idiot, minor, insane or an otherwise disqualified proprietor of the type specified in the Court of Wards Act.* You step in, not because he is unfit, but because he has had the misfortune to have some dispute with his co-sharer. In such a case to treat him as a disqualified proprietor is most outrageous. Then the provision preventing him from applying for partition means that when he comes within the jurisdiction of the common manager, you do not wish that he should extricate himself from his jurisdiction. You wish that he should be deprived of his management and control for ever. Ordinarily where a co-owner loses control over his property in consequence of a dispute between him and his co-owner, the first and foremost honest thought that would suggest itself to him would be to get his estate partitioned so that he may no longer be a co-owner and subject to the jurisdiction of the Court. You bar that remedy. You say, "you shall not get your estate partitioned, as that will lead to the courts losing jurisdiction over you." Surely, in the guise of enacting an agrarian law to govern the relationship between landlord and tenant, you do not wish to pass a law of confiscation of property for these poor people. These provisions were introduced into the Bengal Tenancy Act† on the recommendation of the Kent Commission, an extract of whose report was given by Sir Steuart Bayley at page 379 of the debate on the Bengal Tenancy Bill when opposing the motion of the Hon'ble Raja Peary Mohan Mukerjee for omitting these clauses from the Bill, because to some extent they concerned the relationship between landlord and tenant, for the tenant is hampered and harassed if there is a dispute between the co-owners, and he is interested in the appointment of a common manager. But so soon as a common manager is appointed, the object for which you include these provisions in a Tenancy Act is attained, and you must stay your hands and can go no further. This is the principle recognised in the Bengal Tenancy Act.† You are hardly justified in introducing the provisions of the Chota Nagpur Encumbered Estates Act,‡ or in applying the provisions applicable to a disqualified proprietor under the Court of Wards Act* with respect to a person who may be as competent as any of us here, and who has full power to deal with his property, subject to the rights of his tenants or of his co owner. I submit we are treading on dangerous ground, and that it is safer to follow the Bengal Tenancy Act† in this respect. My hon'ble friend is very anxious to give a right of transfer to tenants who never exercised it before, but by this provision he takes away the rights of the landlord to transfer his property, a right which he has always exercised.

The Hon'ble BABU JANAKI NATH BOSE said :—

Sir, these provisions have been proposed entirely for the benefit of co-owners of estates in Orissa. In fact, Sir, I may submit that the Hon'ble Member in charge of this Bill accepted these proposals only when he was convinced that they would be beneficial to the co-owners themselves, and that they were wanted by the people who would particularly have recourse to this law. The present law, Sir, as we find it in the Bengal Tenancy Act,† has been found defective in actual working. The Privy Council has held that all the co-owners together cannot deal with their property as long as the common management lasts, but that each one of them can deal with his share, or alleged share, of the estate separately. The Council ought to remember that these families in Orissa are governed by the law of *Mitakshara*, and when the estate or estates are taken charge of by the common manager, these shares of individual co-owners are not known or ascertained. If each individual co-owner goes on mortgaging his share or portion of his share, and if suits are brought into court to which the other co-owners and the common manager are parties, the situation gives rise to a lot of litigation which is disadvantageous to the management of the estate. Then we come to the next stage; properties are actually sold, and outsiders become purchasers of fractional shares of such estates. If originally,

* *i.e.*, Ben. Act IX of 1879.
† *i.e.*, Act VIII of 1885.
‡ *i.e.*, Act VI of 1876.

[*Md. Saiyid Wasi Ahmad.*]

Sir, there were three owners of the estate taken charge of by the common manager, in three years' time there may be three hundred such purchasers who would come under the common manager as co-owners of the estate. You can easily imagine, Sir, the disadvantages of such a position, and, in order to obviate such difficulties, the first clause was proposed and accepted by the Select Committee, viz., "nor shall they, without the sanction of the Collector by sale, mortgage, gift, or lease, assign their share of the property."

Then supposing, Sir, a co-owner is possessed of one pie in an estate which is under a common manager, he can, if he is viciously inclined, try to put an end to the common management by suing in the Civil Court for a partition of the estate, or by applying to the Collector for partition of the estate under the Estates Partition Act,* although the other co-owners are quite willing to keep the common management intact. To make such conduct impossible, so that one person owning a very small share in an estate will not be at liberty to do an injury to the other co-owners who are benefiting by the common management, clause (*b*) of sub-clause (3) of clause 101 was proposed to the Select Committee and was accepted. Now, these changes in the law were very carefully considered, and it was thought that if common management was to be at all feasible, some such safeguards must be laid down. My friend from Bihar has not had the experience of the actual difficulties of common management, and nor does he appreciate the reasons why these changes in the law are proposed; and therefore it is on theoretical grounds, Sir, that he is opposing this measure.

The Hon'ble MR. SAIYID WASI AHMAD said:—

Sir, as a similar amendment stands against my name (No. 205), I beg to support the motion that has been put forward by my friend, the Hon'ble Rai Sheo Shankar Sahay Bahadur. I have carefully heard my hon'ble friend from Orissa, the Hon'ble Babu Janaki Nath Bose, and the only ground on which he recommends this clause being passed by this Council is, that it is in the interests of the zamindars and for the good of the people of Orissa. I was waiting to hear from him whether the principle to take away the right of a person is good in itself or not. Sir, the day before yesterday† we heard my friend opposite, the Hon'ble Mr. Das, appeal to this Council that it would be outrageous to deprive a tenant of his right to sell his land in case he may be in need of selling it to support his poor children. I make a similar appeal to the Members of this Council on behalf of petty zamindars who are at times really and honestly forced to sell their properties in order to save themselves, their people and their families. What is the provision that you are making for them? As my friend the Hon'ble Rai Sheo Shankar Sahay Bahadur has said, it is not because a zamindar is unfit to manage his property that you slip in, but because he has the misfortune not to get on well with one or two of his co-sharers. But suppose he is, after the appointment of a common manager, forced, on account of certain circumstances that may befall any person, to sell not the whole, but any portion of his property, why should you oppose that? What is the theory, therefore, whereby a man, after having this right—proprietary right—over his own property, is to be deprived of the power to deal with it in any manner he pleases, especially when he is in no way at fault? Well, Sir, I do not know with what object a change of this nature has been introduced into this Bill, but it appears to me that the introduction of the clause itself is out of order in such a Bill as this, if I may be permitted to say so, because it does not relate to a provision of law governing the relationship between landlords and tenants. This particular clause prescribes for certain action to be taken in connection with two fighting zamindars. Well, surely a Tenancy Bill should not provide a law that governs only zamindars, and does not in any manner interest or affect a tenant. Have you made out a case that tenants are either directly or indirectly affected by means of this clause? If the tenants are not to suffer, then I do not see

* i.e., Ben. Act V of 1897. † i.e., 21st March 1912.

why a clause like this should be incorporated in this Bill. Then, again, look at the hardships which fall upon poor zamindars, when a dispute arises between one or two members of the same family holding joint-property,—whether governed by *Mitakshara* law or Muhammadan law, it does not matter. What is the best way of avoiding that dispute? What is the zamindar to do? The best way of avoiding that dispute is for him to apply for partition and to be finished with it; but you are going to take away even the right of partition of his estate from that zamindar. I submit that absolutely no ground has been put forward, even by my hon'ble friend Babu Janaki Nath Bose, in support of such an enactment. I do not see why this right should be taken away from the zamindar if a common manager has to be appointed. Then again, if you do not permit the partition, practically it will be like this, that the zamindar will have absolutely no hand in the management of his zamindari; he cannot really derive any benefit or any advantage of any sort from his own property; and it will be simply disastrous for the petty zamindars to have any such enactment. The argument has been advanced that the Orissa people are content with this proposed legislation; but my friend forgets that now Orissa is to be a part of Bihar; and we Biharis have therefore as much interest in the welfare of Orissa as the people of Orissa themselves. What will be our fate, then, should we seek to become landlords in Orissa? Supposing rich Biharis go to Orissa because it is part and parcel of Bihar and commence purchasing properties there, the operations of this clause will affect them seriously and very materially. I submit there is absolutely no argument in support of this clause. I therefore support the amendment of my hon'ble friend, Rai Sheo Shankar Sahay Bahadur.

The Hon'ble MAULVI SAIYID MUHAMMAD FAKHR-UD-DIN said:—

"Sir, hitherto my impression has been that the provision for the appointment of a common manager, whether in the Bengal Tenancy Act* or any other Tenancy Bill, was for the protection of the interests of the tenants, and to safeguard the interests of the landlord and the tenants in matters arising between landlords and tenants themselves. But it appears that the provisions of clause 101 have been chiefly incorporated in this Bill for the protection of the interests of the landlords, and of the landlords alone. Now my friend, the Hon'ble Babu Janaki Nath Bose, tells us that these provisions were accepted by the Hon'ble Member in charge of the Bill on the application of the local zamindars. It appears that the zamindars of Orissa are very convenient people. They have got inherent rights, they can sell, mortgage or lease away their properties; they can make an application for the partition of their shares. If they want that these natural and inherent rights which they possess should be taken away from them and should be made dependent upon the mercy of the Collector, I can only say that these landlords of Orissa are fortunate in their desires. My friend, the Hon'ble Babu Janaki Nath Bose, has put forward the case of a *Mitakshara* family; but I put it in a different way. Supposing that in one estate there are two Muhammadan zamindars and two Hindu zamindars of different families, and one of the Hindu zamindars dies, and there is a dispute amongst his heirs. Now, why should the other three persons be deprived of their natural and inherent rights of mortgaging, selling, assigning their share or asking the Collector to partition their share? There is a dispute as regards a fraction of the sixteen-anna property. Now, so far as that fraction is concerned, the estate may be confiscated or kept under management; but why should the other co-sharers be deprived of their inherent rights? That is where I fail to see any justification for this legislation, and there is no such provision under the Bengal Tenancy Act.* I do not therefore think, Sir, that it would be fair in principle to incorporate these provisions in clause 101, because it would be very hard on the zamindars of Orissa. Of course I have got no personal experience of Orissa. My friend, the Hon'ble Babu

* i.e., Act VIII of 1885.

Janaki Nath Bose, is perfectly right in saying that the Bihar Members have got no personal experience of the conditions of Orissa. I am prepared to accept that, but I fail to see the reasonableness of these zamindars of Orissa in making an application to cut away their rights or in putting restrictions and limitations upon their own natural and inherent privileges. Assuming that some landlords of Orissa might have indiscreetly made such applications, yet I am anxious to ascertain the soundness of the principle; we are fighting for a principle. Instead of enacting law to define the relationship between landlord and tenant, you are enacting the provisions of Chota Nagpur Encumbered Estates Act* in this Bill. If the Orissa landlords are anxious, for reasons known to them, to have a curtailment of their powers and rights, then enact some special law for them. With these words I beg to support the motion."

The Hon'ble BABU MAHENDRA NATH RAY said :—

"Sir, I beg to support this amendment, which attempts to do away with a most revolutionary clause of the Bill, and a clause which I submit is most dangerous; and I hope that, before this matter is finally considered and this amendment either accepted or rejected, the Council will consider the very serious question which this clause, and the amendment thereanent has raised. To a lawyer such a provision as would have the effect of depriving a co-sharer of all rights of property, simply because the property has been placed under the charge of a common manager, seems to be opposed to all principles of jurisprudence, and to all known principles of law. It is impossible to find out any connection between the incidents of common management and this taking away from a co-owner of a property under common management the rudimentary elements of rights of property. I find, Sir, from the fact that part of the clause is underlined,† that in it are some of the amendments, rather, the improvements or additions made to the Bill during the course of its passage through Select Committee; and when I look to the report of the Select Committee with a view to see whether any explanation of this most extraordinary provision is suggested, I find it stated at page 5 of the report that, "we have modified the provisions of clause 101, so as to strengthen the hands of the common manager and prevent mischievous interference by co-sharers with the objects of management." I was startled to find, Sir, that this reason was given seriously by the Select Committee for this most revolutionary change. It is impossible to see how the taking away of the elementary rights of property from the co-sharer of a property placed under common management will make it impossible for co-sharers mischievously to interfere with the common management, or how it will strengthen the hands of the common manager. I am afraid, Sir, that when that part of the report of the Select Committee was drafted, the very drastic change made was evidently lost sight of, for the explanation given at page 5 cannot possibly refer to this most revolutionary change. I find that the three hon'ble gentlemen who represented Orissa in the Select Committee have nothing to say about this most extraordinary clause in the notes of dissent submitted by them. If this means, as has been suggested by the Hon'ble Babu Janaki Nath Bose, that the zamindars of Orissa are perfectly content to keep in suspense all their proprietary rights during the indefinite period of the tenure of a joint manager—because I must point out that there is absolutely no limit to the length of time during which the common manager may hold his appointment;—if the zamindars of Orissa really desire that during this indefinite period all their rights of property should be kept in suspense, we may be surprised at the idea, but a sane legislature ought certainly not to support that idea and, in pursuance thereof, give effect to a clause like this

"It does not require any serious argument to point out the fallacy of this position. This Bill nowhere says that it is to apply to *Mitakshara* families

* i.e., Act VI of 1876

† All amendments made in Select Committee were underlined in the copy of the Bill that was laid on the table prior to the debate in Council.

only; it will apply to all families and to all co-owners who may have property within the limits of the Orissa Division; and, within the limits of the Orissa Division, there may be some—there are some families—which are not wholly governed by the *Mitakshara* law. I shall ask the Council for a moment to imagine what would be the possible effect of this clause being made law? A joint manager is appointed with a view that such an appointment shall avoid any inconvenience to the public or injury to private interests. The joint manager takes charge of the common estate, relieves the co-owners of the management with a view to avoid inconvenience to the public or injury to private interests, and this state of things is continued until the Collector is of opinion that this managership can be abolished without any inconvenience to the public or injury to private interests. This state of things may go on for a long time—it may go on for 20 years or 40 years,—and during all this time the person who has a substantial share in the joint estate is not to deal with it as owner of that estate, but has, I suppose, to be relegated to the class of pensioners, and he will get an annual allowance or a monthly allowance, or some other allowance from the common manager. During all these years his rights of ownership are suspended. He cannot sell, and, if he is about to die, he cannot make a bequest in favour of any person. He cannot, even if he has a desire to put an end to all disputes by partitioning the property and getting his share separated from the rest, be allowed to do that. Why? We have been told that this is for the benefit of the Orissa zamindars. But how? If the Orissa zamindars think that, for an indefinite period of time, it would be a benefit to them to extinguish their rights and to be placed on a pension under the direction of the Collector and to be supplied with this pension periodically, they may be welcome to that supposition, but it is an idea which we cannot endorse.

"I submit that this provision is of a revolutionary character, and one for which there is absolutely no justification; and I hope, Sir, that the Council will adopt this amendment and reject this dangerous innovation in the Bill."

The Hon'ble RAJA RAJENDRA NARAYAN BHANJA DEO said:—

"Sir, with regard to the Orissa zamindars, it has been discussed whether the estate ought to go under the management of the Collector or a Judge. There might be some difference of opinion as to that, but I do not think, Sir, that there can be any difference of opinion about omitting these two sub-clauses (*a*) and (*b*) of sub-clause (*3*) of clause 101. I do not know which zamindars of Orissa have actually approached Government to put in these clauses, and I shall be obliged if I am enlightened on the subject. But certainly, Sir, these two are very mischievous clauses in the Bill, and I support the amendment. I believe there is a proposal for the partition of Bhingapur, a large estate in Orissa. The question is pending before the Judge. If the amendment is not accepted, I fear the present provision will interfere with the proposal for partition."

The Hon'ble RAI BAIKUNTHA NATH SEN BAHADUR said:—

"I need add only a few words in support of this amendment. That vested interests cannot be divested is an axiomatic principle, but a breach of that principle would be the effect of this Council adopting this measure. There is no doubt that normally all the owners have power to sell, mortgage, give away, or lease away their property, but restriction on that is sought to be put by this sub-clause (*3*) (*a*)

"Now, it is well known to every one that most of the zamindar class live from hand to mouth, and they have, on occasions of extraordinary expense, to incur debts and then, by economy, to pay off those debts gradually. For instance, a death of a parent in the family necessitates the *sradh* ceremony which the son is in duty bound to perform; in the same way, Hindu families,

[*Babu Deba Prasad Sarbadhikari*]

on the occasions of marriages of daughters, have to incur extraordinary expenses, and for these ceremonies they have to borrow money or sometimes to sell away a portion of their property. Under this innovation they would be precluded from doing that and they would be put to very great inconvenience. On the other hand, the management is not in the least interfered with if a man borrows money by mortgaging his share of the property. The management goes on as before, and the co-owner gradually pays up his debt, or, if he sells his property, the purchaser will be in the same position, because he stands in his shoes. The management is not interfered with, for the only change is that the vendee gets the profits which the vendor was getting. As regards gift, this clause has a far-reaching effect. It interferes, I beg to assert confidently, with the general testamentary powers of co-owners. A gift may be a gift *inter vivos* or a prospective one after one's death. If a co-owner wishes to make a disposition by diverting a course of inheritance, he will be prevented from doing it. That is a right which will be affected by this provision. It has been observed by my Hon'ble friend, Mr. Janaki Nath Bose, that the co-owners concerned are governed by the *Mitakshara* law. I am not in a position to contradict him. Assuming that there must be some cases in which zamindars have acquired properties, the devolution of which they have the right to control by testamentary disposition, what will be the effect of this new legislation? It will have a far-reaching effect of a dangerous and revolutionary character which no Council ought to countenance.

"Then, with regard to the second sub clause (*b*), dealing with partition. According to the original clause, 96, inconvenience to the public is a ground for the appointment of a common manager. In the case of a partition there will not exist such inconvenience. If there is a partition effected, each party enjoys the property separately and there will be no inconvenience to the public. It has been said by my friend that the majority of co-owners like the common manager to continue, but that if one of them is a wicked and mischievous man he may apply for partition for his own purposes. In that case the majority can, if they like, keep the common management by consenting to the partition to the extent of the share of the party applying for partition: the other portion of the estate may remain intact. My friend to the right* has drawn the attention of the Council to the reasons given in the report of the Select Committee as regards these provisions. The fallacy of the reasoning is apparent. The common management will not be interfered with, and this improvement, which is sought to be made by the Select Committee, goes to make a provision of a dangerous character.

"I submit, therefore, that this Council, before it gives its sanction to the placing of this provision on the Statute book, should consider whether it should deliberately ignore the first principles of law and bring about a revolution; and whether it should go so far as to interfere even with testamentary powers."

The Hon'ble BABU DEBA PRASAD SARBADHIKARI said:—

"Sir, I claim that this is more than a mere 'matter of machinery,' and I hope after what has been said that it will be conceded that it is a very serious matter of principle which is involved in this amendment.

"We are not here, though the Hon'ble Mr. Wasi Ahmed seems to think so, to legislate for the benefit of enterprising Bihar investors who threaten that they will buy property in Orissa. I suppose Orissa will be able to take care of itself, and I hope that when the Bihar investor goes into the Orissa market he will find that advantages and disadvantages counterbalance one another. But the anxiety of the Uriya who, according to my friend, Mr. Madhusudan Das, is not always able to take care of himself, is that step-motherly solicitude for its welfare is being carried further than any legislature or Law Court ever thought of. We are aware that in recent times, in the Punjab for example, and in other parts of the country, discount has been sought to be put on land alienation.

* The Hon'ble BABU MAHENDRA NATH RAY.

[*Babu Deba Prasad Sarbadhikari.*]

That was an attempt, however, of a far narrower kind than is boldly attempted in this remarkable clause. We, in this legislature, thought that we were legislating for the ordinary interests which govern the relations between tenant and landlord in the ordinary spheres of life; but to attempt to divert the course of law in a way that this clause seeks to do is an unheard-of thing, and if this legislature were to lend itself to it, it would be opening up the way to enormous difficulties. Sir, the anxiety of the majority of co-owners to keep property together at the expense of inconveniencing a one-pice owner is not at all the exclusive monopoly of Orissa. In other parts of the country also, amiable heads of families are anxious that recalcitrant co-owners, owning half-pice or a pice share of the estate, should not embarrass a family by going and seeking for a partition. But where such an owner has gone to the Law Court, the Law Court has never said, 'You shall not get your partition because you are such an infinitesimal owner. To minimise the evils of such situations the legislature, in its wisdom, has enacted various relieving measures; for example, if the majority of owners desire that their property should not be partitioned by metes and bounds, under certain circumstances it can be put up for sale. Reliefs of that kind the legislature has tolerated, and I have no doubt, under proper conditions, will tolerate to a yet larger degree; but to lay down that when, because of unfortunate incidents, a common manager has been appointed, a man's property should be tied up by a method of perpetuity foreign to the spirit of our law and legislation is a suggestion which the Law Courts and legislatures have always discountenanced, and, to put it in the kindest way, such a thing is unheard of. We, here, by a short clause, are to introduce measures that are entirely alien to the spirit of the law governing perpetuities. The Bengal school was in advance of the *Mitakshara* school in matters of partition, and now that the Bengal and Mitakshara-governed countries are to be separated, there seems to be in the air a subtle and far-reaching sort of reasoning by which the old school is to return to power just when its authority was on the wane.

"When the representatives of Orissa tell us that we have no experience about their internal conditions and that we have no business to speak of these matters, we feel ourselves situated somewhat like those placed between the deep sea and a well-known but (in polite society) rarely-mentioned personage. For, at the same time, complaint is not lacking if there be want of seasonable interference by Bengal Members. Sir, the Hon'ble Mr Madhusudan Das has complained with regard to one of the members of the Select Committee, that he had never been near Orissa and knows nothing of the country. That complaint does not apply to many of us, and certainly not to me. Many witnesses here will bear testimony that I have not only been to Orissa but know the country. My ancestors came from there and I take a lively interest in all matters appertaining to that province and hope to do so for all time in spite of being separated from it, for Orissa has special and unique attractions for me. We Bengalis seek to interfere when it is our duty to do so and because we all take great interest in that classic land. The Hon'ble the Raja of Kanika has said nothing to show that these fundamental changes in the law of the country with regard to ordinary landholders is required, and we shall await the pronouncement of the other Orissa representative as to whether such a change is necessary, for I find some difficulty in accepting in its entirety the *ipse dixit* of the Hon'ble Babu Janaki Nath Bose in regard to this matter.

"The Hon'ble Babu Janaki Nath Bose has referred to mischief making owners. If the sanction of the Collector is to be obtained, how is that to be a remedy against these mischievous evils if they have a real foundation in fact? If these transfers are allowed, the transferee will have no higher rights or status than the owners themselves, and so, by reason of the mere transfer, the transferee cannot harass the common management. If the owners do not think it worth while to keep together their property, are they to be compelled to do so against their will or interest for nearly all time to come? Not only for marriage expenses and *sradh* expenses is it that money may be

required, but there may be other *bonâ fide* demands for money which can be raised only by mortgage or by sale. Transfers at critical moments ought not to be discountenanced, and we have no right to say:—'You are not to protect your interests by raising money because the common manager has the property.' Take another case,—the case of that obnoxious person in Hindu society,—a widow who cannot get enough out of her infinitesimal property to maintain herself. But for this clause she would, under the legal necessity provisions of the Hindu law, be able to raise money for her maintenance or for the spiritual benefit of her husband. All this will be denied to her, because, by this piece of legislation, she will not be able to raise money while there is a common manager. Is it possible that such a state of things is to be tolerated ?

"Having regard to all these reasons, I think the Council ought to set its face against a clause like this and ought not to accept it."

The Hon'ble MR. DAS said:—

"I find that, in this case, the Orissa zamindar has been made to take the position of our old friend, the raiyat. He is not here himself, and therefore people evidently imagine that everybody has a right to represent him and to say what the Orissa zamindar wants and what the Orissa zamindar does not want. There is, on my left, the hon'ble gentleman* who represents the landlords of Orissa and Chota Nagpur, and we have just heard what he had to say on this amendment.

"Orissa is backward no doubt, but that does not mean certainly that the people of Orissa are anxious to be divested of what are their lawful rights. I daresay they have been divested and robbed of their rights under the colour of legislation and sometimes under the colour of settlement procedures. I am glad to hear that, in this Council, persons other than Orissa Members have used the word 'revolutionary,' and that the work done in connection with this Bill has necessitated the use of that word. I have tried my best to impress on some responsible people the difference between taking away vested rights and preventing the acquisition of fresh rights by legislation, but I do not see that my attempts have been successful. I find in one of the papers—paper No. 6, which relates to this Bill—a letter, on page 9, addressed from the Hon'ble Babu Janaki Nath Bose, described as Vice-President of the Landholders' Association. I know that the Hon'ble Member is not the Vice-President of the Landholders' Association, and he does not represent any landholders' association here."

The Hon'ble BABU JANAKI NATH BOSE said:—

"The Hon'ble Member is wholly in error if he refers to my humble self. May I explain? The Vice-President of the Landholders' Association is one Mr. J. N. Bose, and as his initials and mine are the same, the Hon'ble Member has seen fit to put me down as Vice-President of the Landholders' Association."

The Hon'ble MR. DAS, continuing, said:—

"I apologise to the Hon'ble Member. I was, as he surmises, led away by the similarity of the two names.

"The present clause 103 seems to take away from the zamindars the power of transfer and mortgage which they exercised under the control of the District Judge. The withdrawal of this right will be prejudicial to the co-owner. I should like to know who has taken the trouble to take the views of the Orissa

* The Hon'ble RAJA RAJENDRA NARAYAN BHANJA DEO.

landlords on this subject? To me it seems to be a preposterous idea. One man has been living an extravagant life, and another man, his co-owner, may be living a thrifty life: but, because the extravagant man feels the necessity of having a common manager and his estate managed by a Collector, must the thrifty man, who can manage his estate well, be saddled with the pay of a common manager for the only reason that his neighbour is an extravagant man? Is he to undergo all that inconvenience because his neighbour is extravagant? This is really visiting the sin of one's neighbour on one's self. Neither moral nor legislative philosophy will sanction this.' *

The Hon'ble MR. MCPHERSON said:—

"This debate has sprung two surprises upon me:—In the first place I think we are indebted to the Hon'ble Mr Saiyid Wasi Ahmad for letting the cat out of the bag when he explained to us why the Bihar Members object to these new provisions which are proposed to be introduced. They are, it seems, not so much concerned about the cherished rights of the Orissa proprietors, as about their own prospective rights in Orissa properties. This fact may, perhaps, account for the recently-reported meteoric appearance in Orissa of two Hon'ble Bihari Members of the Imperial Council Mr. Das might possibly enlighten us as to the progress of his consultations with these hon'ble 'future partners for life.'†

"A still greater surprise to me, however, has been the language addressed to the Council by the Hon'ble Raja of Kanika and also by the Hon'ble Mr. Das.

"The position is this, Sir—When the Bill was first prepared, it contained no provision of the nature which is now objected to The Bill was circulated to the local associations; and the local associations made various suggestions praying for the insertion of this particular clause We considered them in Select Committee and at first the Government Members were, on the whole, reluctant to accept them. We did, however, accept them eventually in a modified form, adding the words 'without the sanction of the Collector' to the restraints proposed to be placed on co-sharers. We said we did not want to impose on the co sharer that unlimited restraint upon the exercise of his proprietary rights which the local associations wished to impose upon him, but we were willing to give the Collector a power of adjudication in the matter. That is, if the Collector thought that the exercise of his ordinary proprietary rights was proposed for mischievous ends and for the purpose of wrecking the whole of the common management, he would refuse sanction; but if, on the other hand, the exercise of the rights was proposed for a reasonable purpose, it would naturally be sanctioned. All the objections that have been taken to this clause are based on the false supposition that the Collector is an unreasonable and despotic individual who is not swayed by common sense or by common feelings of humanity, but I do not think that the Council will permit themselves to be led by the nose by the Hon'ble Mr. Wasi Ahmad in this connection.

"Not only, Sir, do we claim that the Collector is a reasonable individual, but we give you the safeguard that he is supervised in this work by the Commissioner. If the Collector refuses sanction in any case where he ought not to have done so, then in the ordinary course the aggrieved parties will go to the Commissioner, who will consider their objections and overrule the Collector if he has done wrong. From the beginning we have recognised that the right of partition should not ordinarily be refused to the co-sharers, because partition

* In the actual debate, the Hon'ble Mr. Das read, during this speech, a portion of the opinion on the Bill submitted to Government by the Orissa Landholders' Association, but no reference thereto is to be found in the original proof of his speech. (See the speech of the Hon'ble Mr. McPherson above and on the next page.)

† See page 208, *ante*.

may obviate the dispute which causes the necessity for common management. The only reason why this provision was introduced into the section was to prevent some petty co-sharer, who had no desire to consult the good of the joint family but merely wished to cause mischief, from putting in an application for partition, just at a time when the joint estate is beginning to weather the gale of adversity and recover stability. An application for partition in respect of a one pice share, put in at an inconvenient moment, might involve the whole estate in a great deal of expense and trouble, and the object of the common management might be entirely wrecked. We have no desire by this sub-clause to prevent for all time the partition of estates which are subject to common management. But it may be reasonable to delay the partition till the estate has recovered from the effects of previous mismanagement, or till it can be released under section 102. The Collector will be the best judge of that. He may refuse an application for the time being, but admit it on renewal, and it should be remembered that the parties can refer to the Commissioner if they think that the Collector has acted unreasonably in refusing. The point I wish to emphasise is that all these precautions to secure the success of common management were put into the Bill at the urgent and repeated request of the Orissa zamindars and their local associations.

"Such being the intention of the sub-clause and the history of the case, you will be able to judge of my surprise when both the Hon'ble the Raja of Kanika and the Hon'ble Mr. Das got up in this Council and took exception to these provisions on the ground that they had been put into the Bill without the Orissa zamindars being previously consulted. Unfortunately, neither the Hon'ble Mr. Das nor the Hon'ble Raja of Kanika have got up their case thoroughly. They have, I fear, forgotten the facts. They have not looked at the opinions on the Bill forwarded by the Orissa Landholders' Association, of which I believe the Hon'ble Raja of Kanika has the honour to be President. I do not know, Sir, whether the Hon'ble Mr. Das is a member of the Orissa Landholders' Association; he is more probably a member of some Orissa Raiyati Association, and he is perhaps a member of the Orissa Association However that may be, we have got here the opinions both of the Orissa Landholders' Association and the Orissa Association and, when I read them you will see that I am correct in saying that these provisions in the Bill have been put into the Bill on the suggestion of the two Orissa Associations. The Hon'ble Mr Das began to read* us a portion of the opinion of the Orissa Landholders' Association, but he did not go very far; perhaps it would have been wise of him to glance down the page and see what the Association really did say.

"I will read you their remarks:—

'The present clause 101 (3) seems to take away the power of transfer or mortgage which the common manager, under section 98, clause (3) of the Bengal Tenancy Act,† used to exercise under the control of the District Judge The withdrawal of this right would be prejudicial to the interest of the co-owners. It often happens that, to protect the estate, it becomes necessary to sell a portion or to raise money by mortgage, and co-owners often do not agree among themselves in the matter. This right must of course be exercised under certain restrictions, and the Association suggests that the common manager may be vested with powers conferred on managers under sections 17 and 18 of the Chota Nagpur Encumbered Estates Act,‡ with such modifications as may be deemed necessary.

'The words "otherwise assign" in this sub-clause are not exhaustive and would not include the raising of money by other means, such as by notes of hand, without in any way charging the property. The liberty of co-owners of contracting any amount of debts during the continuance of the management, often embarrasses the common manager and the District Judge, and they find it difficult to meet the demands of previous and subsequent creditors, specially when properties are attached and brought to sale, or a warrant of arrest is issued against one of the co-owners. The Association would therefore suggest that section 3 of the Chota Nagpur Encumbered Estates Act,‡ specially section 3 (5), may, with such modifications as may be deemed necessary, be introduced with advantage.'

---

* *See* foot-note on preceding page.
† *i.e.*, Act VIII of 1885.
‡ *i.e.*, Act VI of 1876.

[*Mr. H. McPherson.*]

"Now, Sir, I have before me a copy of the Chota Nagpur Encumbered Estates Act* and I will read from it to the Council. Section 3 of the said Act lays down that:—

'So long as such management continues,

(*a*) the holder of the said immovable property and his heirs shall be incompetent to mortgage, charge, lease or alienate their immovable property or any part thereof, or to grant valid receipts for the rents and profits arising or accruing therefrom,

(*b*) such property shall be exempt from attachment or sale under such process as aforesaid, except for, or in respect of the debts due, or liabilities incurred to Government, and

(*c*) the holder of the same property and his heirs shall be incapable of entering into any contract which may involve them or either of them in pecuniary liability.'

"The Chota Nagpur Encumbered Estates Act,* you will see, goes very much further than our Bill. In our Bill we deal with immovable property only, but the Landholders' Association wanted to restrict the power of the co-sharers to enter into any pecuniary debt whatever.

"Their opinion continues as follows:—

'The Association would further beg to suggest that the common manager should also be vested with the power of preparing schemes for the settlement of debts with the approval and sanction of the Collector, as provided for in section 11 of the Chota Nagpur Encumbered Estates Act,* and that, in all important matters, such as mortgage, sale, or settlement of debts, the orders of the Collector should be made appealable to the Commissioner as provided for in section 10 of that Act.'

"As I have said before, it has come as a great surprise to me that, in spite of these opinions having been authoritatively promulgated by the Association, they have now been repudiated by the President of the Association, if I am right, as I believe I am, in stating that the Hon'ble Raja of Kanika is the President of the Association. I do not know whether the Hon'ble Mr. Das belongs to this Association or to the Orissa Association. But I do know that the Orissa Association, as well as the Orissa Landholders' Association, was in favour of restricting the powers of the co-sharers further than we have done in this clause.

"This is what they say:—

"Therefore the Association propose to add the words "nor shall any portion of the estate or tenure be attached or sold in execution of a money-decree against one or more of the co-sharers" after the words "assign their share of the property".'

In other words, the Association hold that a co-sharer should not be allowed to incur any private debts.

"I think, Sir, we have good reason to feel aggrieved that, when we have acted upon the suggestions of the Orissa Associations, the Orissa members should now turn round and complain that we have put into the Act provisions which will interfere with the exercise of their rights,—'provisions about which they have not been consulted"! I pause to wonder what the members of the Orissa Landholders' Association will think of their Hon'ble President's consistency!

"Sir, one or two Hon'ble Members have referred to the question of testamentary rights. The Bill, I may explain, contains no prohibition against the testamentary disposition of property."

* *i.e.*, Act VI of 1876.

[*Babu Deba Prasad Sarbadhikari; Mr. H. McPherson; Mr. M. S. Das; the President, Rai Sheo Shankar Sahay Bahadur.*]

The Hon'ble BABU DEBA PRASAD SARBADHIKARI said:—

"What about gifts?"

The Hon'ble MR. H. MCPHERSON said:—

"A gift is not a bequest. There is nothing in the Bill to bar bequests.

"I do not think, Sir, that I have anything further to say on the subject of this sub-clause. I have explained it sufficiently to the Council, and I think the Council will agree with me that the amendment which has now been proposed and has so unexpectedly been supported by two of the Orissa Members should be rejected."

The Hon'ble MR. DAS said:—

"Sir, I wish to say a few words in respect of the personal remark against me."

The PRESIDENT said:—

"What was the personal remark made against you?"

The Hon'ble MR. DAS said:—

"I was in the Select Committee when this clause—"

The Hon'ble MR. MCPHERSON said:—

"I do not remember, Sir, having said anything in my speech about what was done by the Hon'ble Mr. Das in Select Committee. I merely asked if he belonged to the Orissa Landholders' Association or to the Orissa Association."

The PRESIDENT said:—

"You are not in order, Mr. Das, in rising again to speak on this amendment."

The Hon'ble RAI SHEO SHANKAR SAHAY BAHADUR said:—

"I do not wish to make any long reply to the points advanced by the Hon'ble Member in charge of the Bill, but I beg to urge before the Council that this is a Bill, as will appear from the preamble, to amend and consolidate certain enactments relating to the law of landlord and tenant in the districts of Cuttack, Puri and Balasore in the Orissa Division. How can these powers which are proposed to be given to the Collector and how can these provisions depriving the landlords of their rights—which are said to be in the interest of the landlords alone—find a place in such an enactment? Can you, Sir, in an enactment like this introduce all the provisions of the Court of Wards Act* and the Chota Nagpur Encumbered Estates Act?† It is absurd. So long as a provision in some way governs the relations of the landlord and the tenant, you have a right to include it in this Bill. I will not say whether the Hon'ble Member in charge has made out a case that these powers should be taken away from the co-owners and landlords—I think he has not; but I do urge that these provisions should not in any case find a place in the Bill which is now before the Council. If you think, Sir, that the powers of co-sharers should be curtailed, or that some law should be passed depriving them of their right to their property or compelling them not to mortgage, sell, or apply for partition, you ought to have a separate Bill with which the tenant will have nothing to do."

---

* *i.e.*, Bengal Act IX of 1879.
† *i.e.*, Act VI of 1876.

[*Rai Sheo Shankar Sahay Bahadur.*]

A division was then taken, with the following results:—

Ayes 13.

The Hon'ble Babu Bhupendra Nath Basu.
" Babu Kirtanand Sinha.
" Raja Rajendra Narayan Bhanja Deo.
" Babu Deba Prasad Sarbadhikari.
" Mr. Apcar.
" Mr. Saiyid Wasi Ahmad.
" Maulvi Saiyid Muhammad Fakhr-ud-din.
" Babu Hrishikesh Laha
" Rai Sheo Shankar Sahay Bahadur
" Mr. M Das.
" Rai Baikuntha Nath Sen, Bahadur.
" Babu Mahendra Nath Ray.

The Hon'ble Khan Bahadur Maulvi Sarfaraz Husain Khan.

Noes. 27.

The Hon'ble Mr. Slacke.
" Raja Kishori Lal Goswami.
" Mr. Greer.
" Mr. Macpherson.
" Mr. Collin.
" Mr. Stevenson-Moore.
" Mr Chapman.
" Mr Finnimore
" Mr. Kerr.
" Mr. Stephenson.
" Mr. Butler
" Mr. Maddox.
" Mr. Küchler.
" Mr. Morshead.
" Sir Frederick Loch Halliday, Kt

The Hon'ble Mr. Cumming.
" Mr. Bompas.
" Mr. Oldham
" Mr. H. McPherson.
" Babu Janaki Nath Bose.
" Maharaja Bahadur Sir Prodyot Kumar Tagore, Kt.
" Sir Frederick George Dumayne, Kt.
" Kumar Sheo Nandan Prasad Singh.
" Lt.-Col. G. Grant-Gordon.
" Mr. Norman McLeod.
" Mr Stewart.
" Maulvi Saiyid Zahir-ud-din.

The following Members were absent:—

The Hon'ble Mr. Mitra.
" Rai Sita Nath Ray Bahadur.
" Maharaja Manindra Chandra Nandi.
" Maharaja Kumar Gopal Saran Narayan Singh
" Mr. Golam Hossain Cassim Ariff.
" Dr. Abdullah-al-Mamun Suhrawardy.
" Mr. Dutt.
" Mr. Reid.
" Babu Braj Kishor Prasad.
" Mr. Dip Narayan Singh.
" Babu Bal Krishna Sahay.

The Hon'ble Sir Bijay Chand Mahtab, Maharajadhiraja Bahadur of Burdwan, abstained from voting.

[*Mr. Saiyid Wasi Ahmad; Rai Sheo Shankar Sahay Bahadur; Mr. H. McPherson.*]

The result of the division was *ayes* 13, *noes* 27, and the motion was therefore lost.

The following motions were, by leave of the President, withdrawn:—

205. If motion No. 201 be not carried, the Hon'ble Mr. Saiyid Wasi Ahmad to move that the words—

"nor shall they, without the sanction of the Collector—

(*a*) by sale, mortgage, gift or lease, assign their share of the property, or

(*b*) apply for a partition of the estate or other property in the Civil Court or under the Estates Partition Act, 1897,"

in lines 9 to 14 of clause 101 (*3*) be omitted.

206. If motion No. 201 be not carried, the Hon'ble Mr. Saiyid Wasi Ahmad to move that the words "or on a joint application of the co-sharers" be substituted for the words "and not otherwise" in lines 1 and 2 of clause 101 (*8*).

Clause 102.

207. If motion No. 190 be carried, the Hon'ble Mr. Saiyid Wasi Ahmad to move that clause 102 be omitted.

208. If motions Nos. 191 and 194 be carried, the Hon'ble Rai Sheo Shankar Sahay Bahadur to move that the words "District Judge" be substituted for the word "Collector" in line 4 of clause 102.

The Hon'ble Mr. H. McPherson, with the permission of the President, moved that after the words "at any time", in the fifth line of clause 102, the following words be substituted, namely:—

"with the previous sanction of the Commissioner."

The Hon'ble MR. H. MCPHERSON said:—

"This amendment, Sir, is consequential to that already accepted by the Council in connection with sub-clause (*b*) of clause 98,* and which I moved after amendment No. 197 was withdrawn."

The motion was put and agreed to.

The following motions were, by leave of the President, withdrawn:—

209. The Hon'ble Rai Sheo Shankar Sahay Bahadur to move that clause 10A be omitted.

210. If motion No. 190 be carried, the Hon'ble Mr. Saiyid Wasi Ahmad to move that clause 102A be omitted.

Clause 103.

211. If motion No. 190 be carried, the Hon'ble Mr. Saiyid Wasi Ahmad to move that clause 103 be omitted.

212. The Hon'ble Rai Sheo Shankar Sahay Bahadur to move that for the words "Local Government" in line 1 of clause 103 the words "High Court" be substituted.

---

* See page 214 *ante*.

[*Raja Rajendra Narayan Bhanja Deo; Mr. H. McPherson; Babu Hrishikesh Laha; Mr. M. S. Das.*]

*Postponed amendment No. 179.**

The Hon'ble Raja Rajendra Narayan Bhanja Deo, with the permission of the President, moved that, in the place of amendment No. 179,* (as set out in the List of Amendments, Annexure A), the consideration of which was postponed from the meeting of the 21st March, the following be substituted, namely:—

> That the words "tank for drinking water" be inserted after the words "village road" in line 7 of clause 87 (*1*).

The motion was put and agreed to.

Consequential amendment to amendment No. 143†, as modified in Council.

The Hon'ble Mr. H. McPherson, with the permission of the President, moved that, in consequence of the acceptance in Council, at the meeting of the 21st March, of a modified form of amendment No. 143,† by which the new sub-clause, sub-clause (*3c*), was inserted in clause 60, the following amendment be made in line 5 of sub-clause (*3b*):—

> That for the words "as next hereinafter provided" the words "as provided in sub-section (*4*)" be substituted.

The motion was put and agreed to

The following motion was, by leave of the President, withdrawn:—

Chapter XA.

213. The Hon'ble Babu Hrishikesh Laha to move that Chapter XA be omitted.

214. The Hon'ble Mr. M. S. Das moved that Chapter XA be omitted.

He said:—

"Sir, when the Revenue Settlement of Orissa was made between the years 1890 and 1900 the records prepared during that period showed that some portions of land were set apart for certain communal purposes, and in the *kabuliyat* executed by the zamindar it was stipulated that he should be considered responsible for reserving those lands for communal purposes It is not necessary for me to go into the details of the different purposes for which these lands had been set apart, but they were generally of this nature—grazing ground, cremation ground and reserve tanks—the importance and necessity of which are felt and admitted by all. In moving this amendment I should mention here, first of all, Sir, that it is not my intention to say that those lands which have been entered in the *kabuliyat* should be excluded, or that any portion of them should be excluded. Of course there was a contract between Government and the zamindars in respect of those lands, and that contract was put down in writing in the *kabuliyat*. The zamindar was responsible, and under certain circumstances the Collector could take action to prevent any infraction of the terms of the *kabuliyat*. After the revenue settlement, Sir, came the revision settlement, the object of which I do not understand, I must confess. Whether the settlement officers were made to correct the records having reference to the changes which property had undergone between the date of the last record and the date when this revenue settlement record was prepared, or whether they were to correct certain entries which were erroneous, or whether they were to do both I don't know, but I suppose that, for the purposes of my argument, I should say that the records deal with both these objects. Now, during this revision settlement, Sir, some of the lands over and above what had been entered in the *kabuliyat* as 'public grounds,' if I may be pardoned for using such an expression, were entered in the records. The question is whether such an entry should really come within the

* *See* page 189 of the proceedings of 21st March.
† *See* page 176 of the proceedings of 21st March

province of the revision settlement work. Revision settlement work, to me, ought to mean a revision which is necessary on account of changes which have come about in rights in property between the last record (made during the revenue settlement) and the date of the subsequent record made on the spot. Consequently, if the revision settlement officer undertook to make an entry about communal lands in the revision settlement records, *primâ facie* it would show this, that at the time of the revenue settlement they were not 'public grounds,' *i.e.*, communal lands; *i.e.*, they were not used at the time of the revenue settlement for those purposes, but must have come into such use during the interval between the revenue and the revision settlement. Now the difference between 1900 and 1906 was six years. Thus, supposing that during these six years there was some change, some lands which were not actually communal lands at the time of the revenue settlement might have been found to be used for the purposes of the community at the time of the revision settlement. The question would naturally suggest itself, was the use of such a character as to be recognized as an easement, understanding by that term all that every lawyer understands? There was an interval of six years, and even if we suppose that from the day that the revenue settlement officer left the village to the day when the revision settlement officer visited the village again this land was used for public purposes, will that make it an easement? It may be that it had been used for communal purposes only for three weeks, or only for three months before the time when it was recorded by the revision settlement officer. Who were the persons who recorded all this? Amins. I particularly refer to the Hon'ble Member* who will be on the Bench of the High Court a few days hence, and ask him whether the determination of questions of easement can be left to amins on Rs. 10 or Rs 12, and whether the Hon'ble Member will carry such an idea to the High Court Bench. But these are the people who are entrusted with this work, and what is the result? I have actually a specific case where a chaukidar on his nightly visits used to sit down under a tree occasionally, and the amin went and said, 'This is *sarbasadharan* land in public possession,'—because the chaukidar used to sit there every night! Where he finds one morning some cattle going into a tank for the purpose of drinking water—the cattle might have got there by trespassing—the amin goes and says, 'well, the cattle get water here, so it is *sarbasadharan*, used for cattle drinking.' What has been the result, Sir? The result is this: I got a telegram yesterday saying that in one case the Secretary of the Orissa Association had to go into Court, and the Court set aside this record; but look at the expense! And I may tell you, Sir, that before I left for this place—that was only on the 18th March, I saw actually notices issued on behalf of three thousand men in the district of Puri—printed notices—in the hands of a pleader, to be sent to the Collector for civil suits in respect of *sarbasadharan* entries. That is in one district. Really this is revolution; for pardon me, Sir, you are making over the right of inquiry into rights of a most complicated nature to amins on Rs. 10 and Rs. 15. I beg to inquire whether an amin understands what an easement is. He understands very well what it is to lie down at ease and to make an easy life of it, but whether he understands what easement means is a very different matter. An easement is only the right to use a property, which might belong to another person, in a certain way. Unless the property be in another person, there cannot be an easement. I am willing to pay one thousand rupees if anyone will produce an amin before me who will tell me that easement means that the property must be in another person, so that you may have an easement over it. Well, Sir, what will be the social result of this change? The social result will be that the zamindar will not allow any land to be used by the community. He will keep a tight hand and say, 'Here my rights are to be invaded in a most arbitrary manner, and I shall not allow you to use anything.' And that certainly would not tend to a happy state of things. And then, Sir, are we to legislate here on speculative lines, leaving the people to determine the right law in the civil courts? Legislation which depends upon remedial

* Hon'ble Mr. CHAPMAN.

[*Mr. M. S. Das.*]

effects to be produced hereafter by Civil Court decisions does not deserve the name of legislation. The people have a right to say that we want the legislature to think over the matter and to pass the law so that we might be saved the ruinous costs of litigation; but here, seemingly the legislature says, 'We need not stop to enquire what the result of this will be upon the people, or to what length this will prolong litigation; we will pass the Bill—we have no time to look into these things. There is the 1st of April coming, and we must pass this.' Therefore, I say, what is the result? I have told you that there are three thousand men going to the Civil Court in one district; another telegram I received yesterday said (this was from Cuttack), 'My clients have given notice to the Secretary of State that they will bring such suits.' Now what is all this? Are we going to be ruined by litigation? It is said, Sir, very often, that it is this pernicious class of pleaders who multiply litigation. Well, amins do not make any bargains with pleaders.

"Then, Sir, I find this was one of the clauses with reference to which I said that the Hon'ble Mr. McPherson has been ransacking all parts of India and putting on the back of the poor Uriya whatever he finds,—anything likely to give a bend to his back, as though he were to say, 'you are a very turbulent people, you must have the worst laws; it is difficult to manage you. Bengal can be managed; Bihar can be managed; but you people cannot be managed, and so you must have laws from all parts of the world.' It is certainly unlucky that he has not imported anything from the Andamans; he brings things only from Madras! What does the Madras Act say? The Hon'ble Member does not look into the circumstances in which an Act of this nature was justifiable in Madras; he reminds me of some of my countrymen who imitate certain things because they are English, without knowing that they are not at all suited to the conditions of this country. You often find some of my countrymen cutting the tails of their horses because Englishmen in England do it; they forget that there are no flies or mosquitoes in England. The poor animal wants his tail here to drive away mosquitoes.

"In Madras, Sir, when the settlement was made, Government put aside some land as common land, and therefore, when the Act was passed, Government had every right to say, 'Well, no assessment was made on these lands, they were exempted from the assessment of revenue, they were our lands, and you, zamindars, have no right to these lands, and consequently they must be set apart now for communal purposes.' But here, what is the state of things in Orissa? You have assessed every bit of land and you have included it in your *kabuliyat*, only exempting such portion as is particularly mentioned in the *kabuliyat*, and now you say you have a right to decide as to what is communal land. I do strongly object to Government saying what is communal and what is not communal. Government would be perfectly justified in making a contract with the zamindar and asking the zamindar for such land, and if the zamindars were asked, I am sure, in 95 per cent. of cases, they would say, 'Very good, take this piece of land which has been used for communal purposes.' But that is one way of doing things, and there is the other way of assuming that Government have a right to it. If you want to help the community, the best thing would be for somebody, not an amin, to go and inquire which land should be set aside and for what purpose. What do the villagers say? The villagers have been using the land. Your right is based on the present use of the land. There has been no quarrel, no dispute about the land, and the people are living in a happy state of contentment. Is it not desirable, Sir, that a particular inquiry should be made on the spot and something recorded which would cause no disturbance of the peace hereafter?

The Madras Act says this:—I am reading from section 20 of the Madras Estates Land Act*:—

'Threshing floors, cattle stands, village sites and other lands situated in any estate, which are set apart for the common use of the villagers, shall not be assigned or used for any

* Mad. Act I of 1908.

other purpose without the written order of the District Collector, subject to such rules as the Local Government may make in this behalf.'

"'It may be desirable'—I am reading from a speech by the Hon'ble Mr. Forbes when this Act was introduced—"that I should explain in a few words what is the position of Government with reference to this matter. The position that the Government take in this matter is that the village communal lands, which were in existence at the time of the permanent settlement, were not included in the permanent settlement as being lands exempt from land revenue at the time.'

"Well, there lies the difference, and it is an essential difference that makes all the difference between the two cases.

"Again, clause 103A reads :—

'When, in the *sarbasadharan* portion of a record-of-rights, prepared and finally published under Chapter XI, or under any other law for the time being in force, an entry has been made that any land has been set apart for the common use of the community, or for the exercise of certain rights by the community, such land shall not, without the written order of the Collector of the district, be assigned or used for any purpose which interferes with the purpose for which it was set apart.'

"A common man must turn out within six months. The common man is generally a *bajiaftidar*, and the Hon'ble Mr. McPherson has told us what his position is Perhaps his annual income is Rs. 22-8, but he still enjoys the respectability of a zamindar, though he might come to Calcutta and work as a coolie here. This man has got some land, and this land is taken away by the Collector for public purposes. The Legislature is very kind when it allows as much as 30 years to the Collector in which to take such action, and only six months to this poor man. I should be the last person to say that the reservation of communal rights should not be made, for their reservation is recommended by all classes of people. But about these communal rights—we must inquire what rights have been enjoyed. Suppose there is a piece of land which has never been used for communal purposes. A man has his own house on it and has lived there for 30 years, but at the end of that period the Collector says you must give up the land. But how can he remove from there within six months? Suppose a piece of land is set apart for certain purposes. Afterwards it is found that there was a tank there which was filled up. The zamindar says, 'Let us dig another tank here which we will use afterwards for public purposes.' All are agreed to that. Nobody makes any complaint. But even here the Collector has got the power to interfere. I do not say that in no instances Government interference should not be introduced. But I do say that, in a matter like this, an attempt should first of all be made to inquire into the true state of things.

"We must remember, Sir, that this Council is on the eve of its dissolution. The Hon'ble Mr. McPherson has told us that this Bill is the parting gift of Bengal to Orissa. But what is he going to make a parting gift of? A number of law suits? Will this Government undertake to pay all the costs of litigation in the new province? You legislate here without inquiring into the state of things which you have brought about during the revenue settlement operations. You say a system must be introduced in Orissa, because it exists in Bengal or in Madras. I am in a position to say that three thousand men are going to sue—I saw the notices, printed notices,—and I am sure that by this time they are in the hands of the Collector of Puri. Think of the idea of thousands of men going in for litigation. The Hon'ble Mr. Maddox has seen enough of Uriya life. I may not be a friend of the Uriyas, but he claims to be. Now, is it right, is it at all desirable, is it in the interests of society, is it in the interests of the good name of this Council that this measure should be passed at once? Why not leave it to the other Council? Are we on the eve of a revolution that legislation of this kind should be passed at once?"

[*Mr. Norman McLeod; the President; Mr. M. S. Das; Babu Hrishikesh Laha; Mr. Cumming.*]

The Hon'ble MR. NORMAN MCLEOD said :—

"May I rise to a point of order, Sir? The Hon'ble Member is bringing in irrelevant matters into his discussion."

The PRESIDENT said :—

"No; it appears to me that the Hon'ble Member is quite in order and may proceed."

The Hon'ble MR. DAS said :—

"For these reasons, Sir, I submit that this chapter should be omitted from the Bill."

The Hon'ble BABU HRISHIKESH LAHA said :—

"I rise to support the amendment moved by my hon'ble friend, Mr. Das.

"The whole of this chapter proceeds on the assumption of the authenticity of the *sarbasadharan* portion of the record-of-rights, where the communal lands have been entered. But the fallacy of this assumption has been exposed by the Orissa Association (*see* page 283 of the Collection of Opinions), and referred to by Babu Raj Kissore Dass, Manager, Jaggannath Temple, Puri, in his letter dated the 13th January, 1912. But, if this chapter is to be retained at all, its provisions should be made in consonance with the landlord's *kabuliyat*, with a view to ascertaining the communal lands which the landlords, by their agreements with Government, have bound themselves to maintain as such in the village, instead of with the *sarbasadharan* portion of record-of rights where frequently entries about communal lands have been made by mistake or neglect of officers of the Settlement Department. To compel a landlord to set apart a certain plot of land as communal land on the basis of an erroneous entry in the record-of-rights, and then to prosecute him under clause 249 of the Bill for disobedience, would really be unfair and unjust. It is not denied that provisions should be made for the conservation of communal lands. They are necessary for the preservation of health and cattle, but those provisions should not be based upon an erroneous record, and care should be taken that, in the solicitude for the conservation of these lands, people's private lands are not taken on the pretext of their being communal. No doubt, by clause 193D, the Collector is empowered to set aside a wrong entry in the *sarbasadharan* portion of the record-of-rights, but at the outset the landlord is at a disadvantage and, as experience has shown, it is difficult for him to set aside an entry once wrongly made. The provisions of the Penal Code* and of the Code of Criminal Procedure† are comprehensive enough to cover any encroachment on communal rights. Hence Chapter XA is not at all necessary, and its effect on the clauses comprised therein would be to put landlords and tenants at loggerheads, and thus there would be an incitement to the tenants to take as much land as they can from the landlord on a slight pretext. And their combination would be effective so far as evidence in a Court of Justice is concerned, as against the landlord's own lands. This chapter in the long run would be injurious to the interests of the landlord."

The Hon'ble MR. CUMMING said :—

"Sir, the Hon'ble Mover of the amendment was supposed to be speaking on amendment No. 214, viz., that Chapter XA, regarding communal rights, should be omitted; but the first portion of his speech was directed to amendment No. 116 which referred to the agreement made by landlords at the time of the Revenue Settlement. He, however, agreed that communal rights in Orissa should be preserved, and I am glad to see that the Hon'ble Member who spoke next also was of the same opinion. These views they have also given in their Minutes of Dissent. The Hon'ble Mr. Das was quite correct in stating what was

* *i.e.*, Act XLV of 1860.
† *i.e.*, Act V of 1898

intended by the expression 'communal rights.' It is intended to refer to grazing grounds, tanks for drinking purposes, cemeteries, burning grounds and other waste lands on which the community can and does exercise some common right. In explaining this to the Council, I think the Hon'ble Member did not sufficiently explain the arrangements under which these entries have been made. At the time of the original Revenue Settlement they were made by the consent of the landlord, and the entries that were subsequently made at the time of the Revisional Settlement were made under the authority of an amending section of the Bengal Tenancy Act.* Mr. Taylor, whose settlement work is so well known in Orissa, has stated that there were very many lands which were omitted at the time of the original Revenue Settlement, and regarding which there was no doubt as to the propriety of their entry.

"Now, Sir, some reason should be adduced why Government should interfere in this matter at all. It was found in one case in Orissa that a grazing ground had been consecrated by a holy man, and that a curse had been announced against all encroachers. This apparently was effective, because it was found that the present reserved area was practically the same as the original ground. But an arrangement of this kind cannot be made as the general arrangement for the whole of Orissa. What is everybody's business is nobody's business. It may be urged that the private parties interested should take action in a matter of this kind But to this there is an objection. If the zamindar is receiving rent for the land upon which an encroachment has been made, it is not his interest to interfere. Or, again, in the case of raiyats, it is perhaps too much to expect such a general exercise of public spirit on their part in matters in which they are not individually concerned. The present Commissioner of Orissa has advised Government that it is generally agreed that measures should be taken to preserve communal lands and that Government should take the initiative. It has been shown that, in a great many cases, action has been taken with no result at all. There is no procedure. Notices are issued, and after months of notices and counter-notices the Collector finds himself in the same position in which he started. For all these reasons, Sir, this chapter has been inserted in the Bill as it at present stands.

"If the Hon'ble Members who have spoken would admit the propriety of preserving these rights, they are quite correct in saying that sufficient safeguards should be provided against abuse. I submit, Sir, that safeguards have been and are being provided. I have already mentioned that, at the time of the original settlement, the entries were made with the consent of the landlords. I remember making such entries myself, and I can assure the Hon'ble Members that there was no case of interference or encroachment on any zamindar's rights. The orders of Mr. Maddox, the then Settlement Officer, were quite clear on the point. As regards the later proceedings, namely, those of the Revisional Settlement, as I have also explained, the entries were justified because it was legal to make in the record-of-rights an entry concerning any right of way or other easement attaching to the land. There is, therefore, no doubt as to the legality of these entries. As a matter of fact, it was found at the time of the Revision Settlement that new entries had ordinarily been made in consultation with, and with the approval of, landlords. Many of them had given their signatures, and those who were not willing to give their signatures had given their tacit approval. Indeed, a good deal of trouble has been taken to insure accuracy in this respect. No one of course will claim that absolute accuracy can be obtained when one is dealing with a vast number of entries. As for the assertion that entries regarding communal lands are the work of the amins, the procedure actually is that these entries have to be inserted by responsible gazetted officers. Besides, it must be remembered that objections can be taken and suits instituted against such entries. And now, in addition to that, under a new clause 103D, which was inserted in Select Committee, opportunity is given to the Collector of the district to correct

* i.e., Act VIII of 1885

any incorrect entries which may be brought to his notice or to strike out any entry regarding lands which may no longer be used for the common good of the community.

"It is also not the case in section 103A that the lands are being transferred to the Collector. The proprietary right still remains with the zamindars. What section 103A really means is this: That when such entries have been made, such lands shall not, without the written order of the Collector, be assigned or used for any purpose which interferes with the purpose for which it was set apart. The chapter then goes on to say that, if the lands have been occupied by any trespasser and that if the matter is brought to the notice of the Collector, he may issue a notice, and that, after the issue of this notice, the Collector may take action and may have the trespasser evicted. Ample provision has been made for appeal both against the action of the subordinates of the Collector and against the orders of the Collector himself. Such, then, are the provisions, and I do not think that it can be said that these err on the side of harshness. It was stated by the Hon'ble Member who spoke first that strong penal provisions have been brought in from other provinces. I would remind the Hon'ble Member that the present Manager of the Jagannath Temple at Puri has stated that any measure to preserve communal land cannot be too drastic. I consider, Sir, that the provisions in this chapter, which have received the full approval of the Government of India, are quite salutary, and that they are not excessively harsh, and I would therefore call upon the Council to reject the amendment."

The Hon'ble Mr. Maddox said :—

"The Hon'ble Mr. Das has, in his speech, appealed to me. I only wish I could follow his arguments more clearly. They are more difficult to follow than any that I have heard in this Council. I did not gather whether he wanted us to allow the somnolent Uriya zamindar to continue in somnolence, or whether he was anxious that the pernicious pleader should be sent to the Andamans. However that may be, the Hon'ble Member has doubts about the correctness of entries made by the amin on Rs. 10. I would point out that these entries are all attested by responsible gazetted officers. He also objects to new easements being entered. I would point out to him that section 102 of the Bengal Tenancy Act,* under which the previous records were made, is quite different from section 102 as revised by the Amending Act† of 1907 under which the revision record was made. There is a great difference between them, as an examination of clause 105 of the present Bill will show. The Council is asked to give effect to the present record which is to the benefit of Brahmins, Karans, and Pans, as well as of zamindars also."

The Hon'ble Mr. Das said :—

"Sir, the Hon'ble Mr. Maddox says that I did not speak intelligently enough, or rather I was not intelligible enough to him. This is the misfortune we Indian Members suffer from talking in a foreign tongue. All that I can say is that I have done my best always to make myself understood. The question is not who supervises these entries. Am I to understand that a responsible officer actually goes to the spot and sees, day after day, for which purpose a particular land is used and, on firsthand information thus gathered, defines the kind of easement which the public have acquired in it; or am I to understand that the amin reports a piece of land to be *sarbasadharan* and it is then recorded as such? The fact is that *sarbasadharan* record is made without defining the kind of easement. *Sarbasadharan* means that the property belongs to the public, and that very fact will create great confusion; for, as the Hon'ble Mr. Cumming has said, what is everybody's property is nobody's property. Therefore, I say, what everybody claims to be his right is really nobody's right at all. One

* *i.e.*, Act VIII of 1885.

† *i.e.*, Bengal Tenancy (Amendment) Act, 1907.

man says that he will graze his cattle here; another says that he will use it as a park, because it is *sarbasadharan* We must really define the word, or it will lead to confusion. Everything will depend on the interpretation of the word given by the responsible officer in charge of the work. Something is considered as *sarbasadharan*, say, in a portion of a zamindari. Surely one zamindar's consent is not enough. Suppose there are four co-sharers in the zamindari. One of them, to spite the others, declares that a portion belonging to another co-sharer is *sarbasadharan*. Will that be recorded as such? I mention this as something that might happen, and this will lead to confusion and disputes. I have seen, I said, notices to a Collector ready to be delivered and printed, with envelopes addressed, on behalf of three thousand men. Am I to understand that these three thousand men are rushing to the ruinous expense of litigation without any grievance at all, and is not a change of this nature entitled to the consideration of the Council? Yesterday, I received a telegram from a man in which he says, 'I have got an entry removed and altered by the Civil Court, and I have given notice with regard to other entries.' I have, Sir, given a typical instance: A chaukidar sits under the tree at night, sometimes in his nightly rounds, and the amin comes and says, 'this is *sarbasadharan*.' These people have no idea of the facts. The point is that you entrust this duty to those unsuitable classes of people. I should only repeat that, when you are recording what is communal land, care should be taken not to have this work done by the amins. I have not the slightest objection to a man being put in jail for six months for trespass on communal land, and I should be the last man to sympathise with him; but it would not be fair nor wise to record as such lands which are not really communal. On these grounds, I think that this amendment should be accepted."

The motion was then put and lost.

Clause 103A.

215. The Hon'ble Mr. M. S. Das moved that the following be substituted for clause 103A, namely:—

Encroachment of communal lands.

"103A. When in the *sarbasadharan* portion of a record-of-rights of a village, prepared and finally published under Chapter XI, or under any other law for the time being in force any entry has been made setting apart land with the consent of the proprietor for the common use of the community or for the exercise of certain defined rights by the community or land which the proprietor has in the course of a settlement of land revenue engaged by the terms of the *kabuliyat* executed by him to preserve as grazing grounds, cremation grounds and reserved tanks, such land shall be placed under the control of a panchayat appointed by the Collector for the purposes of this chapter, and it shall be the duty of such panchayat to see that the said land is not used for any purpose which interferes with the purpose for which it was set apart."

He said:—

"I do not intend to go over the same grounds again. All that I wish to say is what the Royal Commission on Decentralization stated in their report. I find that the Royal Commission on Decentralization recommended that the panchayat system should be introduced. Of course, it may be found true that we have no such men of public spirit here, as the Hon'ble Mr. Maddox and the Hon'ble Mr. McPherson say. That may be true. In the absence of such spirit or interest, I think it should be the duty of Government to encourage and stimulate the development of the spirit by giving our people a chance. There is very little to be done in connection with this proposal. Panchayats have got great powers, and it is in the contemplation of Government to give them more powers and a much more responsible position. In every village, I suppose, that

the Hon'ble Mr. McPherson and the Hon'ble Mr. Maddox have come across, there is a hut called *bhagabatghar*. It belongs to everybody. Everybody meets there in the evening, and it is a sort of village club. But what does the amin generally do when he comes? He wants to record it as *sarbasadharan*. But it is really a small hut built by the zamindar or some respectable person of the village, and all enjoy the privilege of meeting there in the evening. You cannot call that communal. As regards the infringement of the right, who can be the best judges? I suppose the panchayat or the people who live in the village. The appointment of the panchayat should be left in the hands of the Collector. At any rate, even if they are at all likely to neglect their duty, I am sure they will not sleep for 30 years during which at least ten Collectors will have come and gone. In a much shorter time they would find out that there has been an infringement of the rights of the people. The difficulty is that competent people cannot be found to undertake this duty, but the fact also is that the people do not understand what rights they have. But directly the panchayat is appointed, the matter would be discussed in the village and people would begin to understand such rights. Everybody will understand, 'I have got a right to these lands. I have a right to take water from that place,' and so on, and this will develop the right idea of the easement of the community over lands and other places. At present they say: 'I have been grazing cattle on this land simply because the zamindar permits it.' But if this panchayat system were introduced the raiyat would understand that he has got a right to do so. Now it has been admitted, I gather, from the reports and letters which the settlement officers have placed before the Council that with the revisional settlement the raiyat has understood his rights. So, let not the initiative be left to the Collector, because the Collector will not be at the place for 30 years but the panchayats will. For this reason the initiative should be left in the hands of the panchayat, and nobody would be better able to judge of these matters than the panchayat. I may read another extract (paragraph 20, page 669 of the Decentralization Commission's report): 'It is most desirable to constitute and develop village panchayats for the administration of certain local affairs within the villages. This system must, however, be gradually and carefully worked. The headman of the village, where one is recognised, should be *ex-officio* chairman of the panchayat, and other members should be obtained by a system of informal election by the villagers.' So it is really the idea of Government, I suppose, to develop a spirit of local self-government; and not only that, but to develop a sense of responsibility in the people, and this is certainly a thing which any civilized Government should be proud of. I think, for these reasons, that the rights of the people should be entrusted to some people in the village who would be the best persons in whose hands these rights may be safely left."

The Hon'ble Mr. Cumming said:—

"Sir, I oppose this amendment. I have already explained the general position, and the reason why certain powers are entrusted to the Collector. It is not a fact that the proprietary right is taken away from the zamindars. With regard to these communal lands, the proprietary rights of the zamindars still remain. The lands are simply regarded as subject to certain rights of user on the part of the community. I do not think that the zamindars of Orissa would be grateful to the Hon'ble Member if this amendment were carried, whereby the control of such lands, the proprietary right of which belongs to individual zamindars, would be placed in the hands of the panchayat. Undoubtedly the panchayat, as representing the local interests and rights of the community, can and should take proper care regarding the conservation of such lands; and I am sure that a Collector would welcome any report made by a panchayat on which satisfactory action could be taken. But on behalf of the zamindars, I think the Government should oppose this amendment."

The Hon'ble Mr. Das said:—

"Sir, I am sorry I could not follow the Hon'ble Mr. Cumming, but, so far as I understand, he thinks this would be taking away the rights of the zamindars.

I do not know if there is anything like that in my proposal. I will not, however, make any further remark than this, that the right which belongs to the public, whatever be the nature of that easement, should be left and entrusted to the panchayat; and what is entrusted to the panchayat would be nothing more or nothing less than what the Collector would be entrusted with under this clause. I do not mean to say that the zamindars should be deprived of the proprietary rights. However, if there is any defect in the wording of my amendment, I am quite willing to leave it in the hands of the Hon'ble Member in charge or of our Secretary to be corrected. I think the amendment ought to be accepted."

The motion was then put and lost.

The following motions were, by leave of the President, withdrawn:—

216. If motion No. 213 be not carried, the Hon'ble Babu Hrishikesh Laha to move that the following proviso be added at the end of clause 103A, namely:—

"Provided that the land mentioned as *sarbasadharan* land in an entry of the record-of-rights tally with those mentioned in the landlord's *kabuliyat* executed in favour of Government in regard to the preservation of communal rights, and that in no case shall any entry in the record-of-rights override any condition mentioned in the *kabuliyat*."

Clause 103B.

217. If motion No. 214 be not carried, the Hon'ble Mr. M. S. Das to move that the following be substituted for the first paragraph of clause 103B, namely:—

"If, on the complaint of any member, made with the consent of the majority of the members of such panchayat, it is proved to the satisfaction of the Collector that any person occupies any land referred to in section 103A, for any purpose which interferes with the purpose for which such land was set apart,....."

218. The Hon'ble Mr. M. S. Das moved that the following be added as an explanation to clause 103B, namely:—

"*Explanation.*—The planting of trees and the growth of fodder on land reserved for grazing shall not be deemed to be interference with the purpose for which such land was set apart."

He said:—

"Sir, my humble labours during the last two days' discussion have convinced me that I have been trying to strike blood out of a piece of genuine granite from the rocks of Scotland. I would simply ask the Hon'ble Member in charge whether he is prepared to accept my amendment."

The Hon'ble MR CUMMING said:—

"Sir, I may say on behalf of the Hon'ble Member in charge that the Government is prepared to accept this amendment, but with the omission of the following words: 'and the growth of fodder.' The amendment would then read as follows:—

'*Explanation.*—The planting of trees on land reserved for grazing shall not be deemed to be interference with the purpose for which such land was set apart.'

[*Mr. M. S. Das; Rai Sheo Shankar Sahay Bahadur; Mr. Cumming.*]

"If the Hon'ble Member is prepared to accept the amendment in this form, the Government is equally prepared to do so, but I should add that he is unfair to the Hon'ble Member in charge in suggesting that he has made no concessions in regard to this Bill. He has made many and ample concessions."

The Hon'ble MR. DAS said:—

"I thank the Hon'ble Member, and accept the concession now made with pleasure."

The motion was put in the altered form and agreed to.

The following motion was, by leave of the President, withdrawn:—

Clause 103 F.

219. The Hon'ble Rai Sheo Shankar Sahay Bahadur to move that the words "three years" be substituted for the words "six months" in line 3 of clause 103 F.

220. The Hon'ble Mr. M. S. Das moved that the words "one year" be substituted for the words "six months" in line 3 of clause 103 F.

He said:—

"Sir, I would ask the Hon'ble Member whether, having regard to the circumstances of the case, it would not be reasonable to give one year's time to a man instead of six months, and I hope the Hon'ble Member will accept my amendment."

The Hon'ble MR. CUMMING said:—

"Sir, I oppose this amendment. I see no reason at all to extend the term from six months to one year."

The Hon'ble MR. DAS said:—

"I will then withdraw this amendment."

The motion was then, by leave of the President, withdrawn.

The following motions were, by leave of the President, withdrawn:—

Clause 104.

221. If motions Nos. 191 and 194 be carried, the Hon'ble Rai Sheo Shankar Sahay Bahadur to move that the words "District Judge" be substituted for the word "Collector" in line 4 of clause 104 (2) (*c*).

Clause 105.

222. The Hon'ble Mr. M. S. Das to move that the words "*bajiaftidar* tenure-holder, *bajiaftidar* raiyat," be substituted for the word "*bajiaftidar*" in line 2 of clause 105 (*b*).

Clause 109.

223. The Hon'ble Mr. M. S. Das moved that the words "but the previous entry shall be admissible as evidence of the facts existing at the time such entry was made" in lines 4 to 6 of the proviso to clause 109 (3) be omitted.

He said:—

"Sir, I think the previous entry would be evidence of the facts existing at the time. The idea was, I imagined, that each entry should be evidence till it was replaced by another."

[*Mr. Kerr; Mr. M. S. Das; Maharajadhiraja Bahadur of Burdwan; Babu Hrishikesh Laha; Rai Sheo Shankar Sahay Bahadur; Maulvi Saiyid Muhammad Fakhr-ud-din,; Raja Rajendra Narayan Bhanja Deo.*]

The Hon'ble MR. KERR said:—

"Sir, the Government cannot accept this amendment."

The Hon'ble MR. DAS said:—

"I will then withdraw it."

The motion was then, by leave of the President, withdrawn.

Chapter XII.

The motion to omit this chapter, of which several Members had given identical notice, was next taken into consideration. In the ordinary course, the motion would have been moved by the Hon'ble Sir Bijay Chand Mahtab, Maharajadhiraja Bahadur of Burdwan, since his name stood first in the Amendment List, Annexure A; but, at his request, the President allowed the Hon'ble Mr. Das to move the amendment, and he moved it accordingly:—

224. The Hon'ble Sir Bijay Chand Mahtab, Maharajadhiraja Bahadur of Burdwan, to move that Chapter XII be omitted.

225. The Hon'ble Babu Hrishikesh Laha to move that Chapter XII be omitted.

226. The Hon'ble Rai Sheo Shankar Sahay Bahadur to move that Chapter XII be omitted.

227. The Hon'ble Maulvi Saiyid Muhammad Fakhr-ud-din to move that Chapter XII be omitted.

228. The Hon'ble Raja Rajendra Narayan Bhanja Deo to move that Chapter XII be omitted.

229. The Hon'ble Mr. M. S. Das to move that Chapter XII be omitted.

The Hon'ble MR. DAS said:—

"Sir, on more than one occasion from my seat in this reformed Council and in the old Council, have I expressed the opinion that the principal duty of a non-official Member of this Council is to communicate to the Government the views and wishes of the people and to interpret the views of Government to the people. This is by no means an insignificant duty in a country where, by reason of difference in creed, colour, civilization, and in fact everything which goes to make up a nation's life, there is a gulf between the rulers and the ruled.

"As regards the first part of my duty, I beg to draw the attention of Government to the fact that out of the five non-official Members who served in the Select Committee, four have recommended the deletion of this chapter. The only Hon'ble Member who has not written a note of dissent is a gentleman from Bihar—the Hon'ble Saiyid Zahir-ud-din. I beg permission of the Hon'ble Mr. McPherson to borrow his felicitous language in referring to this gentleman:—'It is difficult to understand what was the cause of the lively interest in the Bill taken by him. If I may be allowed to use a homely phrase, the official Members, numbering seven, all of whom, except one, were connected with the settlement work in Orissa, were old enough to take care of themselves.' If veteran settlement officials, supported by the Legal Remembrancer and an expert especially nominated for the occasion, stand in need of succour from a gentleman from Bihar, surely the two Orissa Members—the one an old man with one foot in the grave, and the other, however worthy of the responsibilities of his seat here, the youngest Member in this Council—ought to be pardoned for their gratitude for any help which is offered to them from Bihar or Bengal

[*Mr. M. S. Das.*]

in an unequal fight with an illustrious galaxy of officials with the Hon'ble Mr. McPherson as their leader.

"There was a meeting in Cuttack on the 17th March. This was a meeting of raiyats convened by me to know their views and wishes on Chapter XII. It was attended by over three thousand raiyats, some of whom had come from villages 2 miles away. The meeting was attended by about five thousand men. The unique feature of this meeting was that scores of raiyats spoke at it. Some of them were pictures of indigence and poverty. They gave unanimous expression to their feelings and opinions. They do not want this maintenance of records. The two settlements have impoverished them while in operation. The arbitrary and incorrect records made have resulted in civil suits which are still pending. Like the mosquito which sucks blood, and, when it has drunk its fill, injects a poison which produces irritation, the settlement amin left behind him the germs of civil suits.

"The raiyats in one voice said: 'if the amin comes again to our village we shall leave our house and hearth and migrate to distant lands where we may have rest.' I know this fact was communicated to His Honour by telegram. I invited the Commissioner and the Collector to this meeting so that they might hear what the raiyats had to say on this subject. They did not attend the meeting. I believe this was not necessary, for they know that no one, except a few men to whom the settlement would provide employment, recommends this maintenance of records.

"The zamindars, the raiyats and the educated public do not want Chapter XII. So much for non-official opinion.

"Let us turn to official opinion. The District and Sessions Judge writes: 'If the maintenance operations could be carried through by superior and trusted officers, all would be well; it is the low-paid amin, the official who comes into the closest contact with the people, who is the source of trouble. Going from village to village, he assumes a most important position in the eyes of the villagers, and, as general arbiter of their fate, has to be placated accordingly. Complaint is made that the *amins* are apt to foment land disputes by pointing out small divergencies from the map which would otherwise pass unnoticed. It is suggested that the raiyats would welcome the maintenance of the land records; I would rather say that, at the most, they are quite indifferent about the subject. The landlords are, of course, opposed to it, owing to the expense and trouble it entails. They long for a rest, and I am sure the rest would be acceptable to the raiyats also.'

"Yes. During the revision and revenue settlement operations, the amin has opened the vital parts of the poor raiyat, and he is in sore need of rest for the healing of the wound.

"I have recently asked the Government to lay on the table letter No. 2.51 B., dated the 23rd November 1911, from the Commissioner of Orissa to the Board of Revenue, and a letter written by the Hon'ble Mr. McPherson to the Board of Revenue on the subject of the maintenance of records. Both these letters are referred to in papers circulated to Hon'ble Members of this Council. My application has, in accordance with the rules relating to official correspondence, been disallowed. I also asked whether Government would examine officials as witnesses under the Bengal Legislative Councils Witnesses Act* of 1866, with a view to ascertaining their opinion on Chapter XII. This request was also disallowed, but I have reason to believe that, among the Hon'ble Members (I mean official Members) of this Council, there are gentlemen whose evidence on oath, coupled with the letters referred to above, if produced, would have established the proposition that Chapter XII should be deleted.

"The Hon'ble Babu Janaki Nath Bose, who was appointed by nomination as an expert for the purposes of the Bill, has recorded his opinion that this chapter should be deleted. When I moved that this Council should not

* i.e., Ben. Act III of 1866.

proceed any further with this Bill my motion was opposed on the following grounds:—

'that this Council has in it a large number of Members, official and non-official, who are intimately acquainted with Orissa or have special interests in Orissa.'

'The question of the maintenance of records was under the consideration of Government just before the end of the last century, and there must have been a great deal of correspondence in which I have reason to believe the Hon'ble Mr. Maddox took part.

"Will the Hon'ble Member in charge of the Bill lay before the Council all letters and reports written by the Hon'ble Mr. Maddox on this subject? If my request meets with the fate with which my application for the Hon'ble Mr. Levinge's letter met, I should be justified in inferring, under the ordinary rules of the law of evidence, that the production of these documents will go against the present decision of Government to make this Chapter law. I am justified in presuming that the Hon'ble Member in charge of the Bill and the Hon'ble Member who was the Settlement Officer of Orissa are not in favour of this chapter.

"The other ground on which my motion for postponement was opposed, was that we have in this Council Hon'ble Members who have special interests in Orissa. As we all know, the Hon'ble Maharajadhiraja Bahadur of Burdwan and the Hon'ble Babu Hrishikesh Laha own estates in Orissa. Both these Hon'ble Members desire the deletion of this chapter.

"I said at the outset that it was my duty to interpret to the people of Orissa the policy and views of Government. When Chapter XII is passed into law, as I fear is the intention of Government, the Orissa public will naturally remark that Government declined to postpone the consideration of the Bill because they had in the present Council official and non-official Members who had special knowledge of, and special interest in, Orissa; how is it, then, that they have gone against the views of those Hon'ble Members and their own trusted officials?

"Will the Government be pleased to omit this chapter from the Act, leaving the question of maintenance to the new Government? The Bill has been so drafted that this omission will not affect the rest of it except a few verbal alterations which the Council may safely leave to their indefatigable and worthy Secretary, Mr. Watson.

"Sir, the question of maintenance has been under the consideration of this Government for several years. Successive Lieutenant-Governors have taken up the question but, owing to the complex nature of the issues involved in it, did not bring it before the Council. It is a serious measure, affecting the interests of millions. In its present form it is opposed by the masses. The consequences of a legislative measure which affects the masses, when persisted in against their reasonable objections, seriously affects peace and order, which it should be the first aim of Government to secure. In a measure like this the responsibilities of legislation and administration should be combined in one Government. Divided responsibility is inequitable if not iniquitous. In the division of responsibility under such circumstances the responsibility of legislation becomes an utter absence of responsibility, when disastrous consequences result from the administration of the law. Is this Council prepared to run the risk? Is it necessary to do so? Is it necessary that this Council, oblivious of its past history which shows anxious deliberation of measures to allay unrest in Bengal, should at the close of its existence,—after even the Hon'ble Members have been photographed, in token of their early disappearance from the sphere of politics,—bequeath to a new Government the seed of unrest?

"Sir, His Gracious Majesty the King-Emperor, in his anxiety to secure the well-being of his subjects, ordained that Bengal, where there was unrest, should

[*Maharajadhiraja Bahadur of Burdwan.*]

be separated from Bihar and Orissa, where unrest is hitherto unknown. Are we showing due regard to the wishes of His Majesty when we make over to the new Government a legislative measure containing the germs of unrest? In the name of the millions of Orissa, where you have spent a great portion of your public life, I entreat and beseech Your Honour to postpone the enactment of Chapter XII. I entreat Your Honour, in the name of those millions of poor Uriya raiyats whom Your Honour has so solicitously regarded during your long period of service in Orissa; I entreat Your Honour in the name of those poor people, who have been actually impoverished by the itching palm of the amin, to omit this chapter, and not only that; in the name of history I entreat Your Honour; in the name of the anxiety which this Council experienced when the unrest in Bengal was uppermost in its mind, I entreat you to consider well whether a measure like this, the responsibility of the administration of which does not lie upon this Government, should be passed at this stage of the life of this Council. And, Sir, may I lastly appeal to Your Honour that where there is peace, where there is order, let us not make over a thing which at least may give rise to unrest hereafter? So that, Sir, when this Act does comes in, when this chapter is introduced, should there be any unrest, should there be any sufferings amongst the poor masses should the operation of this law increase the sufferings of the poor masses, it may not be said that this Act was passed during the last days of a Government which knew that it would not have the responsibility of administering it, and consequently, shirked its share of the responsibility therefor. On these grounds, Sir, I specially appeal to Hon'ble Members, whether official or non-official; when you have the interests of millions in your charge, stop to consider whether this measure is necessary. Lastly, I wish to bring to the notice of Hon'ble Members that several schemes with regard to the maintenance of records have been put forward before Government; this is one of the schemes. An experiment has been and is being made in Orissa; the result of that experiment is not very satisfactory, at least it is not satisfactory to the raiyat. It is not, however, the only possible scheme for a maintenance of records. It may be that this matter has been pending before Government for a long time; but certainly, before it takes shape, before it is finally forged on the anvil of legislation, it ought to receive more consideration, much more consideration, at the hands of the Government which will be charged with the responsibility of putting the law into practice which will be charged with the responsibility of its administration."

The Hon'ble SIR BIJAY CHAND MAHTAB, MAHARAJADHIRAJA BAHADUR OF BURDWAN, said:—

"Your Honour, I had a similar motion, but I asked Mr. Das to open the debate on this subject, not only because he would be best able to tell us the condition of Orissa, but because of his age and experience. Of course, I can well understand the position of Government in this matter, and that to have no maintenance at all is a thing that the Government cannot possibly accept; but my arguments against the retention of this chapter I shall give in a few words, and they are these:—that no explanation has yet been given as to how, during the last 27 years in Bengal, the Bengal Tenancy Act* has worked without this chapter. We have not had this maintenance chapter in Bengal, nor in Bihar. Of course, now that we shall have it in Orissa, my Bihar friends will have to look out as much as ourselves, lest, when the Bengal Tenancy Act* is amended, we shall have this chapter thrust on us. I do not know what my learned friend, the Hon'ble Maulvi Saiyid Zahir-ud-din, has to say to this, but what I intend to say in this connection is this:—that individual officials in Bengal are against this maintenance. The Government of India, I understand, have taken up a fanciful position regarding this maintenance in much the same way that they adopted a peculiar line in the case of the Calcutta Improvement Trust Bill† on the question of the 15 per cent.

* i.e., Act VIII of 1885.
† i.e., now Bengal Act V of 1911

[*Raja Rajendra Narayan Bhanja Deo; Babu Hrishikesh Laha.*]

compensation, concerning which my friend, the Hon'ble Mr. Bompas, voiced so ably the views of the Government. Knowing that, of course I know what the fate of our amendment will be; but I still would ask the Government to consider, seeing that in Bengal we have not had this maintenance chapter at all until now, whether it is right to extend it to Orissa at this juncture, and whether or not we should not gather more opinion on this question of maintenance before pressing it forward. On these general grounds, I support the motion, although I also feel that I cannot lay too much stress on it, for one cannot very well argue that you should not have maintenance at all; but, at the present juncture, I do not see the necessity of having this matter put forward here simply because it is the Government of India's request. I therefore think that the chapter should be deleted."

The Hon'ble RAJA RAJENDRA NARAYAN BHANJA DEO said:—

"Sir, I beg to support this motion. Mr. Das has very ably and strongly pointed out how the provisions of this chapter will prejudicially affect both the tenants and the landlords, and how they will be harassing to both. The scheme of periodical maintenance of records was first proposed, I believe, during the currency of the last provincial settlement of Orissa, and it was discussed by high officials for a series of years. Most of the high officials were intimately connected with the administration of Orissa, and had intimate knowledge of the people opposed to its introduction. They also pointed out that the cost of working such a scheme would be enormous, and that neither the Government nor the people would derive any appreciable advantage, proportionate, that is, to the cost to be incurred. When at last the scheme came from the legislative anvil in the shape of a separate chapter in this Bill, and was presented to the public, all the public bodies and most of the high officials condemned it and opposed its introduction. The official who is now at the head of the administration of Orissa* is, we presume, from the non production of his letter, opposed to it. The people, at a mass meeting held on the 17th March, have given expression to their strong opinion against this measure. Why then, in the teeth of unanimous protest, is this Chapter going to be introduced, which will not serve the interest of any party but prove harassing to all? In the opinion of all, the people need rest after two long protracted settlement and revisional settlement proceedings. How these proceedings have affected both the landlords and the tenants has been graphically described in the opinions submitted by the different public bodies, and I need not repeat their remarks.

"Is this measure introduced into Orissa so that it may serve as a precedent and a justification for its introduction in those parts of Bengal and Bihar where records-of-right have been, or will be, prepared? The principle of following as a precedent the legislative measures introduced in other parts of India has been adopted in the manufacture of this Bill. I would earnestly draw the attention of my colleagues of Bengal and Bihar to this fact, and I hope they will take warning."

The Hon'ble BABU HRISHIKESH LAHA said:—

"I rise to support the amendment which has been moved by my hon'ble friend, Mr. Das. A similar amendment also stands in my name.

This chapter, which relates to the maintenance of a system of land records, has been inserted in the Bill, as has been explained in the Statement of Objects and Reasons, with a view—

(*a*) 'to protect the rights of those who possess interests in land,

(*b*) to furnish information which will form the basis of assessment of land revenue,

(*c*) to furnish information when required for administrative purposes, and

(*d*) to furnish up-to-date agricultural statistics,'

* *i.e.*, the Commissioner, Mr. LEVINGE.

by the 'framing of a special edition of record-of-rights for any area, either yearly or at any other interval of time,' as provided in clause 148. The tendency of this clause, therefore, is to make the settlement of Orissa an annual event. If the object of the maintenance of a system of land records be to maintain peace, order and harmony among the land lords and tenants, as is clear from the provision (*a*) mentioned above, then a more cumbrous and clumsy piece of machinery could not have been invented with which to crush them out of existence. The very reverse of the ideal contemplated would be the case if this system were brought into operation. Peace, harmony and security of rights would have to make room for discord and disunion. Maintenance proceedings would prove a prolific source of hardship, injustice and oppression to, and of consequent dissatisfaction among, the people. Every evil passion would be stirred up, and would be kept up by suits and proceedings in the civil, revenue and criminal Courts. The effect of the enforcement of this chapter would be to sow the seeds of litigation broadcast over the land, open a wide door to perjury and fraud, give rise to endless corruption among the subordinate zamindari and official *amlas*, and throw the agricultural population into a sea of trouble, expense and loss. The *amins* and the underlings of the settlement departments, who would be entrusted with the measurement of lands, would, in order to adjust contentious claims, have a good time of it and would reap a rich harvest by fomenting dispute. Experience has shown that it is not safe to let loose such a corrupt set of men among the peaceful, contented and poor people of Orissa. They have to attend the revenue settlement at the end of every thirty years, and also the revisional settlement within that period,—leaving their ordinary avocations and other duties in order to do so,—and at the same time to meet many expenses and undergo all sorts of trouble to secure their rights. This is enough to make a peaceful people most discontented; but to impose upon them the fresh burden of annual or periodical maintenance of land records would prove simply disastrous. All the objects enumerated in the Statement of Objects and Reasons can be better secured by the records-of-rights themselves, if certain safeguards be provided for the giving of information to the officers employed for that purpose with regard to succession, transfer, or reclamation, to be noted in the newest edition of the record-of-rights,—such note forming part of record. The mere idea of measurement is so much associated with trouble, expense and anxiety, that it would be extremely harassing to the people if the system of annual maintenance of land records be thrust upon them. The evils of the maintenance scheme would far outweigh the benefits that are expected to result from it. To let loose the evils of settlement operations upon a poor but contended people, in order to secure information for the purpose of assessing revenue which could be gleaned from existing materials, would not, to say the least, be justifiable. The finality and authenticity of the record-of-rights would be taken away, though its completion has been brought about at enormous expense. Under these circumstances, it would be a wise policy to let the people of Orissa alone, and save them from the infliction of a yearly or periodical up-keep of land records. This chapter, therefore, should have a quiet burial."

The Hon'ble Mr. Kerr said:—

"Sir, the chapter which we are now considering is apparently regarded as the most contentious matter in the whole Bill, and I rise at this stage not to explain the views of Government or my own views on the subject of the maintenance of records generally, but mainly in the hope that I shall be able to clear up a few points, which will lessen the amount of heat and controversy which appear to have been introduced into our discussion of this question. I must confess frankly, at the outset, that I am not in a position to deal with the matter with perfect freedom, because many important questions in regard to the maintenance of records are still under discussion with the Government of India, the most important being the question of the periods at which maintenance, or, as I should prefer to call it, periodical revision of the records, is to

take place. But these questions, as I shall show, do not arise in connection with Chapter XII of this Bill. Many years must probably elapse and many experiments will have to be made, before a final decision can be come to, or a final scheme of maintenance adopted. Meanwhile, we want a simple and elastic procedure which will enable us to carry on proceedings for the revision of the record-of-rights with less trouble and expense than we have hitherto had to incur, and we merely ask the Council to give us such a procedure, and not to come to any decision on the various schemes which have been put forward. I should like, in the first place, to clear up a few misconceptions. I have had a good deal of experience of this so-called maintenance work myself. About 15 years ago, I carried out what was probably the first experiment in Bengal, under the guidance of my hon'ble friend who is now the Chief Secretary,* and was then my Settlement Officer. About five years ago, as Director of Land Records, I started the revision settlement of Orissa. I do not propose to give the Council any of my experience in connection with Orissa, as my hon'ble friend, Mr. McPherson, has had more recent experience of the work than I have had, but I have taken part in most of the discussions which have been held on this subject, and my experience has been that those discussions, and the work of maintenance, have always been rendered unnecessarily difficult and controversial by the fact that many of the people who were taking part in them did not really know what they meant by the word "maintenance," and that those who did know what was meant by that expression did not mean the same thing as other people who were working and discussing the subject with them. The word 'maintenance' is, in fact, one of those unfortunate words which arouse all the angry passions in human nature, simply because it does not convey a clear meaning or an identical meaning to everybody, and because it arouses, in the minds of many, apprehensions for which there is no justification. The idea of a maintenance-recorder conjures up an individual, with a record in one hand and a pen in the other, who is always lurking about the corners of fields ready to jump out whenever any transactions take place between landlord and tenant in regard to a field, and to make the most he can out of the parties to such transactions. There is an even still more horrible expression which is sometimes used in discussions and correspondence on this subject. I mean the term 'continuous maintenance.' That term brings up the idea of the same individual, with a record in the one hand and a pen in the other, rushing round the country and trying to keep his record up-to-date from moment to moment and altering it with due formalities whenever an old man dies or a little child is born into a co-sharing family. These are the sorts of ideas, I think, which have given maintenance such a bad name among a large part of the agricultural population of the Province; but I need hardly say that Government never intends anything of the sort by the introduction of maintenance schemes, and I will try and explain, briefly, what purpose the provisions of the Chapter, which we are now discussing, are intended to serve. I would point out, in the first place, that the word 'maintenance' finds no place in the Chapter itself. What section 143 authorizes Government to do is to revise the record-of-rights at such intervals as may be found necessary. Now, I would ask the Council, in discussing this matter, to drop the word 'maintenance' altogether, and to confine themselves to the question of 'revision.' I suppose everybody will admit that records-of-rights must be prepared in this country. It has been the settled policy of Government to prepare such records for the last quarter of a century, and I do not think the wisdom and necessity of that policy will be questioned by any responsible person. At any rate, it is too late to do so now in regard to Orissa, because a record-of-rights has already been prepared for the whole of Orissa. Now, it is quite obvious that once you have prepared a record-of-rights, it cannot stand good for all time. It must be revised and brought up-to-date from time to time, or else it would become obsolete. It would not be referred to by the landlords and tenants or by the courts, and it would be of no use in carrying out its main purpose, which is to prevent disputes, to secure the

* Hon'ble Mr. Stevenson-Moore.

landlords and tenants in the enjoyment of their legal rights and privileges, and to cheapen and simplify the decision of any disputes which may arise regarding these matters. For this purpose, the records must be reasonably up-to-date. It is thus clearly advisable that, from time to time, you should revise your record and bring it up-to-date. Such revision, as Hon'ble Members from Orissa are aware, has already been carried out in that Province, but there is no special provision of the law enabling revision to be made, and the consequence was that we had to do the Orissa revision under those provisions of Chapter X of the Bengal Tenancy Act,* which were used for the purpose of framing the original record. Now, the main objection to this is that Chapter X is unnecessarily cumbrous for the purpose of revising a record which is recent and not very much out of-date. I need not worry the Council with details of the procedure which has to be followed under Chapter X, but it is sufficient to say that Chapter X provides for two publications of the record in the course of its preparation under the Chapter which corresponds to Chapter XI of this Bill which we have just passed. Now, before the first publication of records, disputes between landlord and tenant are decided by an attestation officer, who is of the status of a Deputy Collector or a Sub-Deputy Collector. When the first publication is made, another opportunity is given to the parties to raise objections and disputes; after these have again been decided, with rather more elaboration than at the attestation stage, there is a second publication, and after that second publication opportunities are again given to the parties to raise objections and disputes, which are tried with all the formalities of a civil suit, and appeals against the decisions in those last disputes lie to the District Court and to the High Court. There is, moreover, a provision in Chapter XI which allows the Local Government to recover the costs of the preparation or revision of a record-of-rights, made under that chapter, from the parties. Now, all this procedure is unnecessarily elaborate, as I have said, in the case of a record-of-rights which is of fairly recent date, and in a part of the country where there has been no very rapid development of cultivation or material change in agricultural conditions since the original record was prepared. The consequence is that Government has found the need of a simpler, cheaper and more expeditious method of revising a record-of-rights than it has hitherto possessed. This is the primary explanation of Chapter XII, for which the Hon'ble Maharaja of Burdwan asked. Hon'ble Members will see that that Chapter provides for only one publication of the revised record. After that publication, objections will be heard and the record corrected accordingly. But there will be no further publication and no further opportunities for raising disputes. The only appeal will be in the case where the Land Records officer has settled rents on the ground of alteration of area in a tenancy; but the Land Records officer will not be empowered to alter rents on any other grounds.

"Now I think that, leaving aside for a moment all controversial points in connection with maintenance, the Council will agree with me that it is advisable that Government should have this cheap and simple method of revising records-of-rights in cases where a more elaborate procedure is not required. This, as I have said, is the object of this chapter, and I would ask the Council to accept it as such, and I need hardly say that the Council, by passing this chapter, does not in any way express approval of any particular scheme or form of maintenance or of revision of the records. All it does is to give Government power to direct revision to be made in a simple and economical way, where it is satisfied that revision can be efficiently conducted on these lines. I would add, as another point which is not without importance, that this Chapter XII contains no provision, as Chapter XI does, enabling Government to recover the cost of revision from the landlords and tenants concerned. It is intended that the cost of revision should be borne by Government, and that the landlords and tenants should not be required to pay, as they are in the case of an initial record-of-rights prepared under Chapter XI.

---

* *i.e.*, Act VIII of 1885.

[*Mr. Kerr.*]

"I should like to stop here, but from the remarks which have fallen from previous speakers, the Council would perhaps like me to give some indication of the views of Government as to the proper periods at which a record-of-right should be revised. Well, as to this I regret to say that I cannot give the Council any information, for the simple reason, as I have already explained, that Government has not yet made up its mind on the subject. We are still in correspondence with the Government of India. Various schemes of revision have been proposed, annual revision, biennial and triennial revision, quinquennial revision, revision after 15 years, revision after 20 years, and revision once in a generation. At the present moment, an experiment is being made with triennial revision in Orissa, but it has not gone far enough to enable us to say whether it is likely to be feasible as a permanent arrangement. The simple fact is that we have had so little experience of this revision work so far that it is not possible for us to say what a suitable period for revision would be. I may give it, as my own personal opinion, that annual revision is too expensive an undertaking and that it is, moreover, not required in the existing circumstances of the Province; but I must warn the Council that this is my personal opinion only, and that I have no authority to speak on behalf of Government in regard to this matter. It is understood, however, that some objection has been taken to the wording of clause 143 (*1*) (*a*) as implying that Government is committed to a scheme of yearly revision. This impression is quite wrong, and in order to remove it, the Hon'ble Member in charge of the Bill will move at the proper time the omission of these words and the substitution of a provision allowing revisions to be made at such periods as may seem suitable to the Local Government. As I have already said, Government is not committed to any particular scheme. A scheme which has appealed to me, and to a good many other people, is one under which an officer of the Sub-Deputy Collector class would be appointed for each thana or similar area, to look after the land records and to deal with most questions affecting the relations of landlord and tenant. He might also try rent suits, or at any rate uncontested rent suits, or simple rent suits where no questions of law were involved. He would, in fact, be in charge of the administration of the Tenancy Act in the particular area in his charge, and would keep the land records up-to date, so far as was necessary to enable him to carry out his work. I myself think—it is only my personal opinion—that portions of the records might have to be revised more frequently than others. For instance, the records of proprietary rights might perhaps be revised every year, while the records of tenant rights might be revised every five or ten years. Again, it is extremely probable that the varying conditions in different parts of the country might make it advisable to make the revision period different in different places. Thus, in a country where cultivation was rapidly extending, it would be advisable, both in the interests of the landlords and of the tenants, to revise the record fairly frequently. In a more settled part of the country, where cultivation has reached its limits, it might be sufficient to revise the records or portions of them at longer intervals. I wish it to be clearly understood that these remarks must not be taken as indicating any settled conclusions on my own part and still less on the part of Government as to any particular scheme of revision, but I am merely mentioning different schemes to show the difficulties which surround the whole question, and which make it essential that the provisions of the law on the subject should be as elastic as possible. What I ask the Council to do is to accept the view that, once land records have been prepared, revision is necessary sooner or later, and that we do not at present know what periods would be suitable for revision in different parts of the country, but that we do want a revision procedure which will enable the work to be carried out as expeditiously and cheaply as is consistent with accuracy, and that we require such a procedure not less in the interests of Government than in those of the landlords and tenants. This chapter prescribes a procedure which has been found suitable in certain experimental work which has been carried on in Orissa during the last two or three years. It is permissive and elastic but not unduly elastic, and I would ask the Council to accept it as fulfilling the objects which I have described above, and which, I think, will

be admitted by all reasonable people to be very necessary objects, although there may be room for difference of opinion as to the precise procedure to be followed and the precise periods at which revision should be undertaken. But such questions do not arise now, and there is no need to decide them now. As I have already explained, Government can direct a revision of the records as often as it likes, under Chapter XI of the Bill. All that Government now asks the Council to do is to provide a simpler procedure than that of Chapter XI, which can be put in force, if and when required, so as to give the minimum of trouble to landlords and tenants, when revision operations are undertaken for their benefit."

The Hon'ble Mr. H. McPherson said:—

"Sir, my hon'ble friend, Mr. Kerr, has undertaken the task of expounding the policy of Government in the matter of maintenance, of explaining the objects and advantages of Chapter XII of the Bill, and of conducting its main defence. I intervene in the debate in order to tell Members what has been my practical experience of the working of the maintenance scheme. I have been in supervisional charge of the experimental operations in Orissa for the last three years. I have seen the recorders working in the villages amongst the raiyats, I have checked their work in the fields, I have watched the attestation of the recorded changes by the maintenance staff who are gazetted officers of the Subordinate Executive Service, and I have discussed the value of the work both with landlords and tenants, not in the Council Chamber or Committee room, but under the open sky. I can assure the Council as a result of my personal observation that, in actual working practice, this business of keeping the land records up-to-date is not regarded with the unmitigated aversion and horror that have been displayed towards it in Council. The contrast between the theoretical dread of an innovation, and the experience of it in actual practice reminds me of the universal horror which, not so long ago, was felt in India towards the *Kala-pani*. Now that long sea voyages have become common experiences in the lives of Indian gentlemen, the *Kala pani* has lost its terrors.

"Let me, Sir, relate my personal experiences of experimental maintenance. When I have wandered over the fields with the recorder and the raiyats, I have found the latter highly interested in the work. I have asked them whether they like it or not, and they have said, 'we do like it, because we get all our transfers and successions recorded at once, and there can be no dispute.' I have asked, 'Does it not worry you to have to come out to the fields and follow the recorder about?' They have replied, 'It is not much trouble, as it only takes two or three days, but we think it would be enough if he came round every second year or every third year, as there is not much to record every year.' I have asked them, apart from the recorder, if the recorder takes money from them, and they have almost invariably replied 'No,'—sometimes, no doubt, with a twinkle of the eye which indicated that the recorder was not above the usual custom of this country, but not a bad fellow for all that. Sir, we have heard much from the Hon'ble Mr. Das about the misdeeds of settlement underlings, and, though I cannot vouch for the absolute integrity of the field staff, I think that they have been painted blacker than they really are. If you call together a meeting of raiyats and invite them to recite their grievances, promising them at the same time hot cakes and ale and their travelling expenses, you will find no difficulty in collecting a crowd and getting together many a piteous tale of woe. Thus, before each day is over many disappointed litigants leave a settlement camp So, if the Hon'ble Member had only issued his invitations sooner and spread his net further, he might have had, at his meeting last Sunday, a crowd of forty thousand instead of only four I ask the Council to attach no importance to the argument against maintenance based upon this so-called mass meeting of raiyats. I do not know if the Hon'ble Member has ever watched maintenance work in the field, or the process of attestation at a maintenance camp. I know from his published writings that he has paid a visit, in the dead of night, to a revision settlement camp and has painted a picture of distress which excites

my wonder. My experience, Sir, has been different. I have paid hundreds of visits to attestation camps at all hours of the day and night, and I have never found anything but cheerful and interested crowds in attendance. The hardship of night attendance falls upon the officer and his staff rather than on the people. The officer must work about nine hours a day to get through his programme. He is ready to begin at 8 or 9 A.M., but most Orissa raiyats prefer to attend after midday, and to go on till the hour of their midnight meal approaches.

"I have not confined my observation of the maintenance experiment to the raiyats, but have also consulted landlords. I have discussed the work in a friendly informal way with some of the Balasore zamindars who have had the experiment going on in their estates for nearly three years now Though, on the whole, most of them would prefer to be without it, they are not keenly opposed to it. A much respected zamindar of Balasore, Raja Baikuntha Nath Dey, has told me that he appreciates its many advantages, but would prefer to have some sort of compulsory or State-aided registration by the zamindars themselves Another influential zamindar, Babu Radha Charan Das, who was hostile when the revision settlement started, pronounced in favour of maintenance when I asked his opinion in September last. Let not then the Council imagine that a wholly new and terrible thing is being sprung upon the people of Orissa.

"It is not reasonable for Hon'ble Members to suppose that the Supreme Government is selecting Orissa as the jumping-off ground for an absolute leap in the dark. What is proposed for Orissa has been in vogue for many generations in other parts of India. It was, indeed, the usual and universal practice in India, long before the days of British rule, to employ a village recorder to keep the land records and accounts up-to-date. The practice has continued uninterrupted in many parts of India. The disuse into which the practice has fallen in Bengal may be ascribed, without hesitation, to the introduction there of the Permanent Settlement. The subject of maintenance began at once to receive less attention from the ruling power, because there was no revenue involved. To its neglect may be ascribed much of the wrangling and difficulty and litigation that have arisen in the agrarian economy of Bengal. We have gone some way by our surveys and settlements to make up for past neglect. Government wants, by this measure, to take power to go one step further. It is no innovation that is proposed, but a return to the old order of things, a return to the arrangement that now obtains in all the temporarily-settled provinces of India. It was in the highest degree natural that Government should select Orissa for its experiment in this part of India, as Orissa is the only large temporarily-settled area on this side. Let any Member of this Council go to Sambalpur to-morrow and he will see maintenance actually at work with the cheerful and interested acquiescence of landlords and headmen and tenants. In Orissa, the experiment could not be tried till Government had first brought the ten-year old records up-to-date. Government has spent 12 lakhs of rupees during the last five years, in bringing the records of Orissa up-to-date, in order to pave the way for maintenance. All this has been done with the sanction of the Secretary of State, who has closely followed the work. I would, therefore, respectfully advise Hon'ble Members of this Council to pause before they vote for the exclusion of this chapter, which is purely permissive, and will not be set in motion except at those intervals of time which appear to the Supreme Government and the Local Government to be suitable, on a joint consideration of the results of the experimental work now in progress. Many important factors have to be taken into account before any decision is come to. There is first the question of finance, which alone makes it highly improbable that the periodical revision of records can be conducted at intervals of less than three years. There is the question of its effect on the district administration,—the relief, on the one hand, that it may give to the judicial and revenue courts, and the closeness of touch that it may induce between the officers of administration and the people; while, on the other hand, there is the burden of work that it may throw on the district officer. Even more important is the effect it may have on the people. We have to consider what

they feel about it, *when they know what it really means*, whether it causes them undue harassment and what are the compensating advantages. You, the non-official Members of this Council, have told Government very plainly what you think about this maintenance scheme. You have given us your opinions in your notes of dissent from the report of the Select Committee, and in your speeches in this Council. The local associations have given us their opinions, all of which are adverse, and the Hon'ble Mr. Das has organized, for our benefit, a mass meeting of raiyats who have given us their opinions. All these opinions will be duly considered by the Local Government and the Supreme Government. Would it not be wise to stop short here? Would it not be in the interest of your own views to say, "These are our opinions? The chapter, however, is permissive. We know that Government will take our opinions into account in weighing all the arguments for and against maintenance, and we trust Government not to enforce the chapter unless there are other considerations which outweigh those advanced by us, and in any case not to enforce it except at reasonable intervals of time." This attitude, in my opinion, would serve your purpose better than an absolute rejection of the chapter, which might be interpreted by the Supreme Government as pure obstructiveness.

"With these words, Sir, I support the Hon'ble Member on my left,* in opposing this amendment, and I would counsel the Hon'ble Mover to withdraw it.

The Hon'ble MR. DAS said:—

"Sir, I will begin where the Hon'ble Member in charge ended. I am really surprised to know that our giving expression to our opinion on a matter like this should be considered as mere obstructiveness by Government. And it is on this ground that I am asked to withdraw my motion on this chapter. All that the Hon'ble Member has told us is that, at the present time, the Government is in an indecisive state of mind; it does not know what agency is to be employed in carrying out the experiment. It does not know what the result of that experiment will be in Orissa. The whole thing is in a nebulous state, if I may say so. There is also no knowing what the decision of the Government of India will be as to the details. And yet, when it comes to my amendment, I am asked to withdraw my amendment. Why, if anybody is to withdraw, it is the Government. The officials do not know what they are going to do. They do not know what agency they are going to employ. They do not know what will be the result of the experiment. They do not know at what intervals the operations are to be introduced. And yet we are told that, before this Council breaks up, this Bill must be passed into law. What does it mean?—Pass a thing which is purely abstract, which may not be fit for anything, make it over to another Government, and let that Government work it as it likes. That, Sir, is really the position which I gather from the statement of the Hon'ble Member in charge.

"He has told us that he has visited places where he found something 'super'—I do not remember the exact wording—but it was something 'super.' Well, Sir, I do not know whether there is anything 'super' in the ministerial staff of the Revenue Survey office. He has also told us that he found the raiyat contented. I do not of course say that everybody is discontented. The Hon'ble Mr. McPherson also noticed the twinkle in the raiyat's eye concerning the recorder's attempt to take money. I know a great deal more of the meaning of that twinkle than he does. It meant plainly, 'what do you see; can you see anything'?

I do not know what the Hon'ble Member in charge means by his reference to my mass meeting. He asks the Council not to take any notice of such meetings. They did not have hot cakes at that meeting, but I certainly wrote, when convening the meeting, that those who were very poor and who could not afford to pay their railway fare and had to come

* Hon'ble MR KERR.

[*Mr. M. S. Das.*]

from a long distance would be provided with the cost of their journey. And, I think, I was quite right. It would have been quite unreasonable to expect raiyats to come from a long distance at three days' notice. It is all very well for Government officials to order the raiyats to come and run about without the least thought as to their convenience. But I thought it my duty to provide them with their costs. Sir, I do not like to take up the time of the Council any more. The Hon'ble Mr. Kerr has told us that the procedure adopted in this chapter is not as long as it is in the other chapter, and that this 'maintenance' will be a very short thing,—a very short operation. But I say the danger lies in the very shortness of it. It gives greater opportunity to the recorder to make incorrect entries, and these incorrect entries go undetected. It is not right to make short work of a thing when other people's rights are concerned. We have had a graphic description from the Hon'ble Mr. Kerr of the man with an ink-pot in one hand and a pen in the other, going about the village and making entries. If we had a man with a due sense of responsibility it would be all right. It is the better position and character of this man, and a greater sense of responsibility on his part that we want. Government thinks that such men can be had in plenty, as if it were the easiest thing in the world to get a man of character on a low pay. How much does Government propose to pay for the sense of responsibility of these men? As I have said, and as Mr. Judge Adami has also said, it is the man of character and position that is wanted. If the Hon'ble Mr. McPherson would accompany me to a village—it may be any village in the district of Cuttack—and take the people unawares as it were, without giving any notice, I could show him a state of things which is anything but desirable. It would not require hot cakes to gather together about 10 or 20 thousand Uriyas in Calcutta—in the grounds of Belvedere, if the Hon'ble Member so likes. And I would ask Mr. McPherson to question them as to what would be their condition under this chapter. Are we to encourage *amins* and touts? If we are, it is the ignorant raiyat who will suffer. I may not be a friend of the Uriyas, but I will ask Mr. McPherson to go and ask the poor Uriya raiyat whether he likes these maintenance provisions. But he must be told plainly what they are, for it would not be fair to prey on his credulity begotten of ignorance. If I withdraw my amendment, I would not be the friend of Orissa, as I consider myself to be. I ask that the question be put."

The motion was then put and lost.

The Council was then adjourned to Wednesday, the 27th instant, at 11 A.M.

A. W. WATSON,

Offg. Secretary to the Bengal Legislative Council.

CALCUTTA,
The 27th March, 1912.

B. S. Press—16-5-1912—898J—450—B. B. B.

Proceedings of the Legislative Council assembled for the purpose of making Laws and Regulations under the provisions of the Indian Councils Acts, 1861 to 1909 (24 and 25 Vict., c. 67, 55 and 56 Vict., c. 14, and 9 Edw. 7, c. 4).

THE Council met in the Durbar Hall at Belvedere on Wednesday, the 27th March, 1912, at 11 A.M.

Present:

The Hon'ble SIR FREDERICK WILLIAM DUKE, K.C.I.E., C.S.I., Lieutenant-Governor of Bengal, *sub. pro tem., presiding.*

The Hon'ble MR. F. A. SLACKE, C.S.I., *Vice-President.*

The Hon'ble RAJA KISORI LAL GOSWAMI.

The Hon'ble MR. R. T. GREER, C.S.I.

The Hon'ble MR. D. J. MACPHERSON, C.I.E.

The Hon'ble MR. C. J. STEVENSON-MOORE, C.V.O.

The Hon'ble MR. E. P. CHAPMAN.

The Hon'ble MR. B. K. FINNIMORE.

The Hon'ble MR. J. H. KERR, C.I.E.

The Hon'ble MR. H. L. STEPHENSON.

The Hon'ble MR. T. BUTLER.

The Hon'ble MR. S. L. MADDOCK, C.S.I.

The Hon'ble MR. G. W. KUCHLER, C.I.E.

The Hon'ble MR. L. F. MORSHEAD.

The Hon'ble SIR FREDERICK LEWIS HALLIDAY, KT., M.V.O., C.I.

The Hon'ble MR. J. G. CUMMING, C.I.E.

The Hon'ble MR. C. H. BOMPAS.

The Hon'ble MR. C. E. A. W. OLDHAM.

The Hon'ble MR. H. MCPHERSON.

The Hon'ble BABU JANAKI NATH BOSE.

The Hon'ble MAHARAJA BAHADUR SIR PRODYOT KUMAR TAGORE, KT.

The Hon'ble SIR FREDERICK GEORGE DUMAYNE, KT.

The Hon'ble KUMAR SHEO NANDAN PRASAD SINGH.

The Hon'ble BABU BHUPENDRA NATH BASU.

The Hon'ble RAI SITA NATH RAY BAHADUR.

The Hon'ble SIR BIJAY CHAND MAHTAB, K.C.S.I., K.C.I.E., I.O.M., Maharaja-dhiraja Bahadur of Burdwan.

The Hon'ble BABU KIRTANAND SINHA.

The Hon'ble RAJA RAJENDRA NARAYAN BHANJA DEO.

The Hon'ble BABU DEBA PRASAD SARBADHIKARI.

The Hon'ble MR. J. G. APCAR.

The Hon'ble MR. NORMAN MCLEOD.

The Hon'ble MR. F. H. STEWART, C.I.E.

The Hon'ble MR. GOLAM HOSSEIN CASSIM ARIFF.

The Hon'ble MR. SAIYID WASI AHMAD.

The Hon'ble MAULVI SAIYID MUHAMMAD FAKHR-UD-DIN.

The Hon'ble MAULVI SAIYID ZAHIR-UD-DIN.

The Hon'ble RAI SHEO SHANKAR SAHAY BAHADUR.

The Hon'ble MR. MADHU SUDAN DAS, C.I.E.

The Hon'ble RAI BAIKUNTHA NATH SEN BAHADUR.

The Hon'ble BABU MAHENDRA NATH RAY.

The Hon'ble KHAN BAHADUR MAULVI SARFARAZ HUSAIN KHAN.

The Hon'ble MR. DIP NARAIN SINGH

[*Maharajadhiraja Bahadur of Burdwan; Rai Sheo Shankar Sahay Bahadur; Mr. Kerr; Maulvi Sayid Muhammad Fakhr-ud-din; Raja Rajendra Narayan Bhanja Deo.*]

On the resumption of the debate, the following motion was, by leave of the President, withdrawn:—

Clause 143.

*230. If motion No. 224 be not carried, the Hon'ble Sir Bijay Chand Mahtab, Maharajadhiraja Bahadur of Burdwan, to move that for the words "either yearly or at any other intervals of time" in lines 2 and 3 of clause 143 (*1*) (*a*), the following be substituted, namely:—

"twenty years after the final publication of the record-of-rights in that area, or, on every subsequent occasion, at an interval of 15 years."

231. The Hon'ble Rai Sheo Shankar Sahay Bahadur moved that the words "at reasonable intervals of time not less than at an interval of five years" be substituted for the words "either yearly or at any other intervals of time" in lines 2 and 3 of clause 143 (*1*) (*a*).

He said:—

"Sir, I think that the proposal which I make is a reasonable one. I submit, Sir, that to give power to correct the records yearly is ridiculous, for both landlords and tenants will have no peace. If maintenance of records is to be undertaken at all, it should be undertaken not more frequently than at intervals of five years. I therefore beg to move this amendment."

The Hon'ble Mr. Kerr said:—

"I have already† given reasons why it is necessary to have fairly elastic provisions in this chapter, particularly in regard to the periods at which revision of these land records is desirable. As I said on Saturday,‡ we are at present without sufficient experience of revision operations to lay down definitely what would be a suitable period at which they should be carried out, and I have also explained that it is highly probable that that period will differ in different parts of the country, where different conditions prevail, and that it will also possibly vary in regard to different portions of the record. The record of proprietary rights must, for instance, be kept fairly well up to date, whereas the record of tenants' interests can be left for a longer time without revision. I also said that the Hon'ble Member in charge of the Bill would move an amendment to this clause which would leave it open to Government to authorise the revision of records at such periods as may be deemed suitable hereafter. This provision of the Bill must be fairly elastic, and it would be unwise to tie ourselves down by the law to any specific period of time. I therefore oppose the amendment."

The motion was then put and lost.

The following motions were, by leave of the President, withdrawn:—

232. If motion No. 227 be not carried, the Hon'ble Maulvi Saiyid Muhammad Fakhr-ud-din to move that the words "at an interval of fifteen years or more" be substituted for the words "either yearly or at any other intervals of time" in lines 2 and 3 of clause 143 (*1*) (*a*).

233. If motion No. 228 be not carried, the Hon'ble Raja Rajendra Narayan Bhanja Deo to move that the words "at intervals of at least fifteen years" be substituted for the words "either yearly or at any other intervals of time" in lines 2 and 3 of clause 143 (*1*) (*a*).

* This and the following numbers (up to 268) refer to the serial number of the amendments which were included in Annexure A to the List of Business laid upon the table.

† *Vide* proceedings of 23rd March, pages 247 to 251.

‡ *i.e.*, at the previous meeting, held on the 23rd March.

[*Mr. H. McPherson; Mr. M. S. Das; Raja Rajendra Narayan Bhanja Deo; Babu Hrishikesh Laha, Rai Sheo Shankar Sahay Bahadur.*]

The Hon'ble Mr. H. McPherson said:—

"With your permission, Sir, I desire to move a small amendment to sub-clause (*1*) (*a*) of clause 14 . I propose that for the words 'either yearly, or at any other intervals of time' the following words be substituted :—

'at such intervals of time as it may deem suitable.'

"The insertion of 'yearly' as an alternative is held to be objectionable by some Hon'ble Members, who are willing that the Chapter should be applied at such intervals of time as may appear to Government to be suitable on a consideration of the results of the experimental work, but do not wish to express any sort of approval of the system of annual maintenance. I appreciate the force of this view, and can see no objection to the proposed alteration which I recommend for the Council's acceptance."

The amendment was put and agreed to.

Clause 144.

234. This amendment was set out in Annexure A to the list of business in the following form:—"If motion No. 229 be not carried, the Hon'ble Mr. M. S. Das to move that the words 'be liable to pay a fine not exceeding fifty rupees, and, for further disobedience, shall be subject to the penalties provided by Chapter X of the Indian Penal Code' be substituted for the words 'be subject to the penalties provided by Chapter X of the Indian Penal Code" in lines 3 and 4 of clause 144 (*3*)."

The Hon'ble Mr. M. S. Das said:—

"Sir, may I be permitted to modify the above amendment? At the suggestion of the Hon'ble Member in charge of the Bill, I propose that, after the words 'for disobedience thereof' in line 3 of clause 144(*3*), the following words be inserted, viz, 'be punishable with fine which may extend to Rs. 50, and shall, in the event of subsequent disobedience,' etc."

The Hon'ble Mr. H. McPherson said:—

"I accept the amendment in this modified form."

The amendment was put in the altered form and agreed to.

The following motion was, by leave of the President, withdrawn:—

Clause 148.

235. If motion No. 228 be not carried, the Hon'ble Raja Rajendra Narayan Bhanja Deo to move that the words "or was commenced more than two years before the date of the application, and the landlord has not, during that period, instituted a suit to eject the tenant from the land so reclaimed, or unless such suit has been dismissed" in lines 3 to 8 of proviso (*ii*) of clause 148 (*1*) be omitted.

The Hon'ble Babu Hrishikesh Laha being absent, the following amendments, standing in his name, were held to be withdrawn:—

236. If motion No. 225 be not carried, the Hon'ble Babu Hrishikesh Laha to move that the word "twelve" be substituted for the word "two" in line 4 of proviso (*ii*) of clause 148 (*1*).

237. If motion No. 226 be not carried, the Hon'ble Rai Sheo Shankar Sahay Bahadur to move that the word "six" be substituted for the word "two" in line 4 of proviso (*ii*) of clause 148 (*1*).

[*Babu Hrishikesh Laha; Raja Rajendra Narayan Bhanja Deo; Mr. H. McPherson; Mr. M. S. Das.*]

238. If motions Nos. 225 and 236 be not carried, the Hon'ble Babu Hrishikesh Laha to move that the word "six" be substituted for the word "two" in line 4 of proviso (*ii*) of clause 148 (*1*).

239. The Hon'ble Raja Rajendra Narayan Bhanja Deo moved that the word "four" be substituted for the word "two" in line 4 of proviso (*ii*) of clause 148 (*1*).

He said:—

"Two years is too short a time to ascertain and detect unauthorized cultivation and to institute suits for ejectment. The landlord gets 12 years under the ordinary law. Why should this period be curtailed? The provision of this short period will encourage clandestine cultivation."

The Hon'ble MR. H. MCPHERSON said:—

"I am unable to accept this amendment for the reasons which I fully explained when dealing with clause 54A. The ordinary period of limitation prescribed in clause 54 A is four years. That applies to areas in which no maintenance of records is carried out. Where records are regularly maintained and maps are revised at intervals of three or five years, the landlord can have no practical difficulty in detecting even the smallest encroachments on waste land, if he takes a little trouble. If he wants to sue for the ejectment of persons who are already his tenants from additional lands reclaimed by them, he may reasonably be expected to take action within two years. The provisions of the clause, it will be borne in mind, apply only to persons who are already tenants. When a limit of two years has been prescribed for the jungly tracts of Chota Nagpur, two years is surely not too short for densely-populated and highly-cultivated Orissa, with a system of maintenance or periodical revision in force.

"Permanently-settled areas are exempted from the operation of this special provision, and are left to the operation of clause 54A, because they were not concerned with the bargain that was struck with temporarily-settled proprietors and obtain no benefit from the private-lands concession."

The motion was then put and lost.

The following motion was, by leave of the President, withdrawn:—

Clause 151.

240. If motion No. 229 be not carried, the Hon'ble Mr. M. S. Das to move that the words "but the previous entry shall be admissible as evidence of the facts existing at the time such entry was made" in lines 4, 5 and 6 of the proviso to clause 151 (*2*) be omitted.

Clause 153.

241. The Hon'ble Raja Rajendra Narayan Bhanja Deo moved that the words "relating to a rent settled under this Chapter" in lines 2 and 3 of clause 153 be omitted.

He said:—

"Sir, an appeal under this clause is confined to an order relating only to settlement of rent. Other disputes affecting right and title may arise, but no provision for appeal has been made against orders deciding such disputes. In Chapter XI there is provision for appeals and civil suits. In the absence of any distinct reference to Chapter XI, this Chapter, taken by itself, will be construed to constitute a complete Code, so far as proceedings relating to the maintenance of records are concerned. This will seriously prejudice the parties, who will have no remedy against orders deciding disputes relating to title."

[*Mr. Kerr; Raja Rajendra Narayan Bhanja Deo; Mr. H. McPherson.*]

The Hon'ble MR. KERR said:—

"The effect of the Hon'ble Member's amendment would be to make all the orders passed by an officer revising land records appealable to higher authorities. This would destroy one of the main objects of Chapter XII which is to make the procedure in revising land records as simple as is consistent with efficiency. We are providing an appeal against an order settling a rent, as that is an important matter; but, as regards the rest of the operations under this Chapter, they merely result in a record in which the entries are presumed to be correct until the contrary is proved. The real appeal against them will come when those entries come before the Court, or are taken advantage of in some other way. In the case of 90 per cent., or more, of the entries, they will be left as they stand, and there is no object in encouraging people to appeal about them. In the case of the remaining 10 *per cent.*, if there is any dispute, the matter may very well be left over until the necessity arises to come before a proper Court. To allow an appeal would unnecessarily complicate the procedure and lengthen the operations and add to the expense and trouble caused to the agricultural community. I must therefore oppose this amendment."

The motion was then put and lost.

Clause 162.

242. The Hon'ble Raja Rajendra Narayan Bhanja Deo moved that the word "*nij-chas*" be inserted after the word "*nij-jote*" in clause 162 wherever it occurs.

He said:—

"Sir, I beg to propose that the word *nij-chas* be added after the word *nij-jote* in this clause. *Nij-chas* is used in many permanently-settled estates to refer to proprietor's private lands in the same sense as *nij-jote* or *khamar*. Unhappily, the distinction between *nij jote* and *nij chas* was made in the temporarily-settled area at the time of the last Revenue Settlement. Clause 163A of the Bill provides that, in the temporarily-settled area, *nij-chas* shall be included in the category of proprietor's private lands, but no such provision has been made for the permanently-settled area. There has, so far, been no distinction between *nij-jote* and *nij-chas* lands in the permanently-settled area, and my opinion is that such distinction should not have been made even in temporarily-settled areas; the local meaning attached to *nij-chas* lands should have been enough to suffice for their being recorded as proprietor's private lands.

"If the word *nij-chas* is added here, it will not affect the temporarily-settled area. Sub-clause (*1*) of clause 163A limits the *nij-chas* area to proprietor's private land and sub-clause (*2*) lays down that no further *nij chas* areas shall be held to be proprietor's private land.

"As to the permanently-settled area, if the word *nij-chas* be not included in this clause, large areas, which are actually proprietor's private lands, will be excluded just because they are called *nij chas*. In many of the permanently-settled areas no record-of-rights has been prepared, and so there has been no record of *nij chas* lands in accordance with the principles applied in the last settlement. *Nij-chas* lands in the permanently settled area need not be the same as the *nij-chas* lands of the temporarily-settled area. The latter is recorded as such after inquiry by the Settlement Officer, but the former, in some cases, is only a synonym for a proprietor's private lands."

The Hon'ble MR. H. MCPHERSON said:—

"Sir, it will save the time of the Council if I intervene early in the debate on this amendment and explain to Hon'ble Members what is the effect of the proposals that have been incorporated in the Bill on the subject of proprietors' private lands, and what the intentions of Government are. I have already explained the position with considerable fullness in my introductory speech.

[*Mr. H. McPherson.*]

"Cultivated lands in the direct possession of proprietors may be of two kinds. They may either be the old demesne lands which were set apart for the maintenance of proprietors and are referred to in the old Regulations as *nankar*, *khamar*, *nij-jote*,—*see*, for example, sections 37-40 of Regulation VIII* of 1793,—together with such lands as have come by local usage to be regarded as belonging to the same category, or they may be lands which have belonged to what may be called the raiyati stock and have come into the hands of proprietors by purchase, abandonment and the like. Varying names are used in different localities to indicate the two classes of lands. In the Bihar settlement, the two classes are distinguished by using the word *zirat* for the privileged class and the words *bakasht malik* for the non-privileged class. In Orissa the words chosen at last settlement to mark the distinction were *nij-jote* and *nij chas*. It was perhaps a little unfortunate to use the word *nij-chas*, because it is so like in etymology to *nij-jote* that people confuse the two in ordinary conversation. It might have been better to have used the work *hal-chas* which was at one time thought of as an alternative. The point, however, is not of importance. So far as the result is concerned, the classes might equally well have been distinguished by the labels 'X' and 'Y', 'X' signifying privileged land, and 'Y' non-privileged. The important thing was the distinction in significance. The true *nij jote* is privileged in this way that it may be let out to village raiyats for a term of years or from year to year at any rent the parties may agree upon, without any danger of the raiyat acquiring occupancy rights. Subject to contract, the proprietor can take it back at any time, and can vary the rent of the cultivator as he pleases. The non privileged land is on the same footing as the privileged, so long as it remains in the proprietor's own cultivation, but if he lets it out to village raiyats, he loses his absolute control over it. He may let it out, to begin with, at any cash rent he chooses; but after the raiyat has acquired occupancy rights, the rent cannot be varied except in accordance with the terms of our Bill, and if the initial rent is a produce-rent, the raiyat may apply for its commutation under section 40 of the Bill. It thus becomes an object with the proprietor to keep as much land as he possibly can in the privileged category. He has more freedom of action with regard to it. He can let it all out at a rack-rent and need not be hampered by the inconvenient restrictions of the tenancy laws. It is for this reason that, in Bihar, proprietors claim all their land, regardless of its history, as *zirat* or *khudkasht*. It is for this reason that the champions of the Orissa zamindars claim that there is no distinction between *nij-jote* and *nij-chas*, and that the Settlement Department made a great mistake in drawing such a distinction 15 years ago. Sir, the Settlement Department made no mistake in this matter at the last settlement, and this, at any rate, is not a case in which *ex*-Settlement Officers have come forward with palliative measures to redeem or conceal the effects of alleged previous errors. When Act X of 1859† was in force throughout the Province, Orissa and Bengal were on the same footing as regards private lands. The words used in section 6 of the Act "But this rule does not apply to *khamar*, *nij-jote* or *sir* land belonging to the proprietor of the estate or tenure and let by him on lease for a term of years or year by year"—applied equally to both. Before the last revenue settlement of Orissa took place, the Bengal Tenancy Act‡ had been passed. It sought to put an end to the controversy about *khamar* lands by a compromise which was favourable to the landlord. It said—'we will give you not only the old demesne lands and lands regarded as such by local usage, but also lands now in your possession which you have given proof of your intention to cultivate yourselves, by keeping them in your continuous cultivating possession for more than 12 years.' The new Act had not been extended to Orissa when the settlement came on, but it was thought desirable to work in the spirit of its provisions in making the distinction between the privileged and the non-privileged area.

* *i.e.*, the Bengal Decennial Settlement Regulation, 1793.
† *i.e.*, the Bengal Rent Act, 1859
‡ *i.e.*, Act VIII of 1885.

[*Mr. H. McPherson.*]

"Working on this basis, the officers of settlement recorded about 40,000 acres as the *nij-jote* of proprietors and proprietary tenure-holders, and about 130,000 acres as their *nij-chas* or non-privileged. The whole subject is discussed at page 30, of Volume I of Mr Maddox's Settlement Report, and I will here point out that I made a mistake in my speech of the 9th January when I said that, under the influence of the Bengal Tenancy Act,* all the lands in possession of proprietary tenure-holders were classed as *nij-chas*. What was in my mind was that, as the law stands,—that is, since it was held by the High Court that the extension of the settled raiyat sections of the Bengal Tenancy Act* to Orissa had repealed section 6 of Act X of 1859,†—all the private lands of proprietary tenure-holders are legally devoid of the special privilege that attaches to proprietors' private lands. Both at the revenue settlement and at the revision settlement, the old *nij-jote* lands of sub-proprietors have been scrupulously recorded as such, and the passing of this Bill will merely confer on them the protection which it is desirable to accord them. That the sub-proprietors have lost nothing in actual practice may be gathered from the fact that against 4,860 acres of recorded *nij-jote* of sub-proprietors in Balasore and Cuttack, there is now a recorded *nij-jote* area of 4,830 acres.

"To return, however, to the aggregate figures :—

"Against the 40,000 acres of *nij-jote* and 130,000 acres of *nij-chas* recorded at last settlement, we have now, 10 years later, in the revision settlement, recorded 38,500 acres of *nij-jote* and 139,000 acres of *nij-chas*. That is, the proprietary classes retain 96 per cent. of their privileged area and have increased their non-privileged lands by 7 per cent., the whole amounting to about one-eleventh of the total cultivated area of Orissa. During the revision settlement there was naturally a good deal of attention directed towards the non-privileged area. It was open to any raiyat to whom it had been let out for cultivation to claim it as his raiyati land, and it says much either for the affection which subsists between landlord and tenant in Orissa or for the power which the former has over the latter that compartively few claims were made. We have a shrewd suspicion that the great bulk of the privileged and non-privileged area alike is cultivated through tenants holding on produce-rents. When the Hon'ble Mr. Maddox made his enquiries in 1909, a good deal of representation was made to him regarding the *nij chas* lands. It was urged that the temporarily-settled proprietors and sub-proprietors of Orissa were comparatively poor men, that they were increasing in numbers, that they depended on their *nij-jote* and *nij-chas* lands for their subsistence and for the punctual discharge of their revenue demands, and that they should be treated more generously in this matter than the permanently-settled proprietors of Bengal. Government had already been considering the desirability of protecting the old *nij-jote* lands of sub-proprietors, which, as the law stood, were not protected, and when, in response to these local representations, Mr. Maddox came forward with a proposal that the privileges of *nij-jote* land should be attached to all that portion of the recorded *nij chas* of the last revenue settlement which is still found to be in the cultivating possession of proprietors and sub-proprietors, Government considered the proposal sympathetically and recommended it for the acceptance of the Supreme Government. The proposal has been accepted and embodied in the Bill, and, as I have already explained in my opening speech, it will mean the transfer of about one lakh of acres from the non-privileged to the privileged area. The proposal was received enthusiastically, as one can well understand, by the proprietary body in Orissa which had never hoped for this good fortune. Its result will be that the proportion of privileged land will be higher in Orissa than in any other part of Bengal.

"When the Bill was circulated to the Local Associations, they, of course, approved of the proposal, but,—note the cupidity of human nature,—having got far more than they could ever have hoped for, they began to ask for more.

* i.e., Act VIII of 1885.
† i.e., the Bengal Rent Act, 1859.

[*Raja Rajendra Narayan Bhanja Deo; Maharajadhiraja Bahadur of Burdwan.*]

And so we have had proposals that the concession should be extended to all classes of tenure-holders, to *bajaftdars* and *bahal tankidars* and *kharida jam bandidars*, and so forth. We have been asked to apply it to all the recorded *nij-chas* of the last revenue settlement, regardless of the fact that raiyati rights may have accrued in portions of that area; in other words, to confiscate rights that have grown up under the law and to ignore the originally proposed test of continuous cultivating possession. We have even been asked to insult and stultify ourselves by making a solemn admission in this legislative measure that our former *nij-chas* record was all a huge mistake. This is Government's reward for offering to the Orissa proprietors a concession that is immensely greater than any that has been allowed to proprietors in any other part of Bengal! The ingratitude which has been desplayed is such as almost, I should think, to make Government repent that the concession was ever proposed.

"With these words, I would ask the Hon'ble Mover and other Hon'ble Members who propose to modify clauses 162 and 163 A to reconsider their position and withdraw their amendments. None of them, with one exception, are acceptable to Government, which has already offered the maximum possible, and does not mean to budge from the position that has been taken up in these clauses as they came from Select Committee.

"The exception to which I refer is amendment No. 250, which will be accepted by Government in a modified form. The object of this amendment is to secure that the results of the concession shall not be dissipated by anything that may have occurred since the final publication of the record. Whatever transactions may have occurred will be considered as having reference to privileged land. It is right that this should be allowed, because the concession has been before the public of Orissa for at least three years. As a matter of fact, it will not have any very material effect, because the proprietors will take care that no claims are made by under-tenants in respect of lands entitled by the new provision to be *nij-jote*; and it is, moreover, doubtful whether the addition to be made by the amendment is strictly necessary. However, as the Hon'ble Mr. Das has pressed for it, I am glad to concede the point.

"As regards this particular amendment now under consideration, I would only remark that I cannot accept the proposed addition of *nij chas* to the enumeration of the names by which privileged lands in the permanently-settled areas are known. It would be dangerous to make the addition, because the word *nij-chas* has been earmarked in Orissa to denote the unprivileged area. The Hon'ble Mover need be under no apprehension that any land which is, by origin or custom, entitled to be placed in the category of proprietor's private land will be excluded from that category, because the local people may be in the habit of calling it *nij-chas*. The framers of the record will look to the history of the land and not to its name only."

The motion was then put and lost.

The following motions were, by leave of the President, withdrawn:—

243. The Hon'ble Raja Rajendra Narayan Bhanja Deo to move that the words and figures "26th July, 1911," be substituted for the words and figures "21st August, 1906," in lines 4 and 5 of clause 162 (*2*).

244. The Hon'ble Raja Rajendra Narayan Bhanja Deo to move that clause 162 (*3*) be omitted.

Clause 163A.

245. The Hon'ble Sir Bijay Chand Mahtab, Maharajadhiraja Bahadur of Burdwan, to move that, for clause 163 A, the original clause 163 of the Bill, as introduced in Council, be substituted.

[*Maharajadhiraja Bahadur of Burdwan; Mr. M. S. Das; Mr H. McPherson; Rai Sheo Shankar Sahay Bahadur.*]

246. If motion No. 245 be not carried, the Hon'ble Sir Bijay Chand Mahtab, Maharajadhiraja Bahadur of Burdwan, to move that the words "In any area" be substituted for the words "In temporararily-settled estates" in line 1 of clause 163 A (*1*).

247. The Hon'ble Mr. M. S. Das to move that the word "*nij-jote*" be inserted before the word "land" in line 1 of clause 163A (*1*) (*b*).

248. The Hon'ble Mr. M. S. Das to move that the words "by mistake" be inserted after the word "recorded" in line 1 of clause 163A (*1*) (*b*).

249. If motion No. 248 be carried, the Hon'ble Mr. M. S. Das to move that the words "by mistake" be inserted after the word "recorded" in line 5 of clause 163A (*1*) (*b*).

250. The Hon'ble Mr. M. S. Das had given notice to move that the word "and" be omitted from the end of clause 163A (*1*) (*a*) and inserted at the end of clause 163A (*1*) (*b*), and that the following be added as sub-clause (*c*), namely:—

"(*c*) this sub-section shall be deemed to have been in force at the time when the records-of-rights specified in clause (*b*) were published."

The Hon'ble MR. M. S. DAS said:—

"I beg permission to move amendment 250 in the following modified form, which has been approved by the Hon'ble Member in charge:—That the following sub-clause, (*1 a*), be inserted after sub-clause (*1*) in clause 163A, namely:—

"'(*1 a*) Any land recorded as *nij-chas* in a record-of-rights finally published between the years 1906 and 1912, which falls within the category of proprietor's private land under the provisions of clause (*b*) of sub section (*1*), shall be deemed to have become proprietor's private land with effect from the date of the final publication of such record.'"

The Hon'ble MR. H. MCPHERSON said:—

"I accept this amendment."

The motion was put in its amended form and agreed to.

The following motions were, by leave of the President, withdrawn:—

Clause 164

251. The Hon'ble Rai Sheo Shankar Sahay Bahadur, to move that the words "under section 13A, 13B or 13C" in proviso (*ii*) (*a*) of clause 164 be omitted.

[*Rai Sheo Shankar Sahay Bahadur; Mr. H McPherson; Mr. M. S. Das; Maharajadhiraja Bahadur of Burdwan.*]

252. The Hon'ble Rai Sheo Shankar Sahay Bahadur to move that proviso (*ii*) (*c*) of clause 164 be omitted.

The Hon'ble Mr. H. McPherson said:—

"With Your Honour's permission, I beg to move here the amendment which is numbered 12A* on the 'Fresh Amendments' list, which I have already had your general permission to speak to, viz.:—

"12A. That the following be substituted for proviso (*ii*) (*a*) to clause 164 (*c*), namely:—

"(*a*) registered under section 13 A, 13 B, 13 C or under any law previously in force, or . . ."

The motion was put and agreed to.

The following motion was, by leave of the President, withdrawn:—

253. The Hon'ble Mr. M. S. Das to move that the words "whether tenure-holder or raiyat" be inserted after the word "*bajiaftidar*" in line 1 of proviso (*ii*) of clause 164 (*2*).

New Clause 201 A.

254. The Hon'ble Sir Bijay Chand Mahtab, Maharajadhiraja Bahadur of Burdwan, in the absence of the Hon'ble Babu Hrishikesh Laha, and with the permission of the President, moved that the following clause be added after clause 201:—

"201A. All suits and proceedings under this Act shall be instituted and tried at a place to be fixed, with the approval of the local Government, at the head-quarters of a district or of a subdivision of a district, as the case may be, and to be known as the court-house of the Collector."

Place of suing.

He said:—

"It is well known what hardship and inconvenience the parties have to undergo when they have to attend an officer on tour from camp to camp, and it is therefore absolutely necessary that the form of administering justice should be at a fixed place. People who are not litigants themselves can form no conception of the trouble to which the parties are subjected. If the Bill had provided for the trial of rent-suits by the Civil Court, this amendment would not have become necessary, but as all these suits will be tried by Revenue Courts, we cannot but insist that some provision should be made for their trial at head-quarters of districts or sub divisions, even though it involves increased expenditure by the appointment of more officers. It often happens that a party with a just case has to come to a compromise because either he is not rich enough or does not like to incur the trouble and inconvenience of a long journey in the interior from his place of abode. It sometimes leads to failure of justice. An officer on tour is occupied with many matters, and he cannot therefore bestow that undivided attention which is necessary for the formation of a calm judgment. This is a real grievance of the people which should be redressed. The necessity for this amendment is therefore obvious."

* This amendment was taken from the list of "Fresh Amendments" which was laid on the table at the meeting of the 20th March—(*See* the second foot-note on page 87 of the proceedings of 20th March.)

[*Mr. Kerr; Mr. M. S. Das; Mr. H. McPherson.*]

The Hon'ble MR. KERR said :—

"I cannot agree to the amendment proposed by the Hon'ble Member. He has told us in his speech of the great trouble and difficulty which landlords have in going to remote places in the mufassal to have their cases tried, but we have heard very little regarding the great trouble and expense which raiyats experience in coming into the head-quarters of the district or subdivision in order to have their cases tried. I think that the expense in one case may fairly be taken to be counterbalanced by the expense in the other, and that this Council need not attempt to decide between the two claims. Apart from this question of expense, which is by no means the most important, it is clear that, on the merits of the case, by far the greater number of disputes relating to land can most easily and expeditiously be settled on the spot. Unfortunately, the staff at the disposal of Government is not at present such as to enable all suits between landlord and tenant to be tried in the village concerned. The great majority of such cases must, I fear, continue to be tried at the head-quarters of districts and subdivisions, but I look forward to a time when the mufussal agency at the disposal of Government will be strengthened, and a much greater number of land suits than at present will be tried on the spot. I regard the advantages of this measure as infinitely greater than any disadvantages which the landlords or their pleaders may be put to in a few isolated cases. All difficult cases, raising points of law, in which legal advice is necessary, would, as a rule, be tried at head-quarters. The motion of the Hon'ble Member would entirely destroy the possibility of reaching the ideal to which we look forward, and I trust the Hon'ble Member will not press his motion, but will leave it, as at present, to the discretion of the courts, subject to the control of superior authority to decide the place at which suits relating to land should be tried, having regard to all the circumstances of the case and the general convenience of the parties."

The motion was then put and lost.

Clause 207.

255. The Hon'ble Mr. M. S. Das moved that the words "where an appeal is not allowed" be substituted for the words "whether an appeal is allowed or not" in line 4 of clause 207 (1).

He said :—

"Sir, the clause, as it is in the Bill, says :—

> 'the rules in rule 13 in Order XVIII in the first schedule to the Code of Civil Procedure,* 1908, for recording the evidence of witnesses shall apply, whether an appeal is allowed or not.'

"That rule lays down that, in cases in which an appeal is not allowed, the Judge shall make a memorandum of the evidence. But, of course, in cases where an appeal is allowed, a regular record of evidence should be kept. Here it is said that, whether a case be appealable or not, there need be no regular record of evidence. Considering, Sir, that this evidence is to be recorded, and these suits are to be tried, by Deputy Collectors, whereas the Civil Procedure Code* was framed for the guidance of the Civil Courts, is it not desirable that this privilege, that is to say, the making of a memorandum only and not the full recording of evidence, should be given only in those cases where no appeal is allowed? For, where an appeal is allowed, evidence ought to be recorded in order to place the Appellate Court in a position to judge whether the judgment is correct or not. I simply ask for what the Civil Procedure Code has enacted, and I hope the Hon'ble Member will not oppose it."

The Hon'ble MR. H. MCPHERSON said :—

"I regret, Sir, that I cannot accept this amendment, because, if it were accepted, it would destroy much of the benefit that is derived from the

* *i.e.*, Act V of 1908.

special procedure provided for the trial of rent-suit cases. It is desirable, alike in the interests of landlords and tenants, that the disposal of rent-suits should be expeditious, and that proceedings should not be prolonged unduly. In the vast majority of cases, the issues are of the simplest nature. This is especially the case in an area that is fully equipped with a record-of-rights. Under the Bill, as it stands, it will be the duty of the trying officer to record all the substance of the evidence in writing. And this should be sufficient for the purposes of appeal. An officer who prepares his records in a perfunctory manner will incur the displeasure of the appellate court, and may have his cases remanded. We have not heard that the working of the corresponding provision in the Bengal Tenancy Act* has caused any injustice or inconvenience in Bengal, where it has been in force for 30 years, and I do not see why we should anticipate any such results in Orissa.

"Moreover, if reference be made to section 60 of Act X of 1859,† it will be seen that no innovation is being introduced. Section 60 says, regarding the examination of the parties, that 'the substance of the examination shall be reduced to writing in the vernacular language of the Collector and shall be filed with the record.' Nothing more is required.

"I would also note that nearly all rent-suit cases are appealable, for the Collector tries very few himself, and that the practical effect of the amendment would be to destroy the whole of the value of our special procedure."

The motion was then put and lost.

Clause 208.

256. The Hon'ble Maulvi Saiyid Muhammad Fakhr-ud-din moved that the following be added at the end of clause 208, namely:—

> "Provided that the plaintiff shall be entitled to recover the entire costs of the suit incurred by him, and that the decree shall specify the exact amount of money and costs separately payable to the plaintiff and the *pro formâ* defendant."

He said:—

"This clause is similar to clause 148A of the Bengal Tenancy Act,* and this new section was added in the year 1907. Since then, some little difficulty has been sometimes felt when the plaintiff brings a suit and prays for the recovery of rent, and during the trial some of the *pro formâ* defendants often put in a written statement asking the Court to pass a decree for their share of the rent, separately. Then sometimes the plaintiff gets a decree for his share of the rent, *plus* the costs. Now, I simply want that, by the addition of a special provision at the end of this clause, a specific decree may be passed in favour of the plaintiff, or in favour of the *pro formâ* defendants, and that it shall declare also the proportionate amount of costs incurred by the plaintiff and by the *pro formâ* defendant. In some cases, the plaintiff would be entitled to get the entire costs, although he would get a decree for his share of rent only. Suppose some of the plaintiffs are absent, the whole costs will have to be realized by the contending plaintiff because he has incurred the entire costs, although he will get a decree for his share of the rent only. With the object stated, Sir, I propose that this provision may be added at the end of clause 208."

The Hon'ble MR. CHAPMAN said:—

"Sir, I cannot advise the Government to accept this amendment, first, on the general principle that it is unwise to legislate on the subject of costs. It is always desirable to leave the question of costs to the discretion of the Courts. There are some cases in which a Court may consider that a plaintiff is not entitled to have his costs, either with reference to the manner in which he has conducted his suit, or with reference to some other circumstances. That

* i.e., Act VIII of 1885.

† i.e., The Bengal Rent Act, 1859.

is the general objection. Secondly, I think that the Hon'ble Member has not quite understood the clause. The clause merely contemplates a decree for the plaintiff's share of the rent. The plaintiff is to have such a decree that there cannot be any amount payable to anybody but the plaintiff. Further, the clause only applies to cases in which it is impossible to ascertain what is due to the other co-sharers, so there cannot be any decree for any amount in favour of the co-sharers. I therefore advise that the Council do not accept this amendment."

The motion was then put and lost.

The following motions were, by leave of the President, withdrawn :—

Clause 219.

257. The Hon'ble Mr. M. S. Das to move that the words "whether tenure-holder or raiyat" be inserted after the word "*bajiaftidar*" in line 2 of clause 219 (*1*) (*c*).

Clause 226.

258. The Hon'ble Mr. M. S. Das to move that the words "*bajiafti* tenancy" be substituted for the words "*bajiaftidar*" in line 2 of clause 226 (*2*) (*a*).

Clause 227.

259. The Hon'ble Mr. M. S. Das to move that the word "raiyat" be inserted after the word "*bajiaftidar*" in line 2 of clause 227 (*1*).

Clause 228.

260. The Hon'ble Mr. M. S. Das to move that the word "raiyat" be inserted after the word "*bajiaftidar*" in line 2 of clause 228 (*1*).

Clause 231.

261. The Hon'ble Mr. M. S. Das to move that the word "*bajiaftidar* raiyats" be substituted for the word "*baiaftidars*" in line 2 of clause 231 (*3*).

Clause 232.

262. The Hon'ble Mr. M. S. Das moved that the words "or the right of co-sharer landlords" be inserted after the words "decree-holders' right" in line 1 of clause 232 (*2*).

He said:—

"I think there has been a mistake on my part in drafting my amendment, and I understand that a counter-proposal will be put forward."

The Hon'ble MR. CHAPMAN said:—

"I am prepared to accept this amendment in a different form. I move that, instead of amendment No. 262, the following be accepted, namely: That after the words and letter 'clause (*c*)', in sub-section (*2*) of clause 232, the words and figure 'of sub-section (*1*)', or the amount of any payment contemplated by proviso (*i*) or proviso (*ii*) of the said sub-section, be inserted."

The motion was put and agreed to.

The following motions were, by leave of the President, withdrawn:—

263. The Hon'ble Mr. M. S. Das to move that the words "clause (*b*) and" be substituted for the word "clause" in line 2 of clause 232 (*2*).

[*Raja Rajendra Narayan Bhanja Deo; Mr. H. McPherson; Maharajadhiraja Bahadur of Burdwan; Rai Sheo Shankar Sahay Bahadur.*]

Clause 241.

264. The Hon'ble Raja Rajendra Narayan Bhanja Deo to move that the words "transfer or" in line 1 of clause 241 (3) (*d*) be omitted.

265. The Hon'ble Raja Rajendra Narayan Bhanja Deo moved that the words "custom or" be inserted before the words "local usage" in lines 2 and 3 of clause 241 (3) (*d*).

He said :—

"I have changed the words 'custom and' in the original amendment to 'custom or,' in which form, I think, it will be accepted by the Hon'ble Member in charge."

The Hon'ble MR. MCPHERSON said :—

"I accept the amendment in the modified form, Sir."

The motion was put in the modified form and agreed to.

266. The Hon'ble Raja Rajendra Narayan Bhanja Deo moved that the words "an occupancy-raiyat" be substituted for the words "a tenant" in line 1 of clause 241 (3) (*g*).

The Hon'ble MR. MCPHERSON said :—

"I accept the amendment, Sir, because occupancy-raiyats are the only tenants who can apply for commutation."

The motion was put and agreed to.

Clause 245.

The following motion was, by leave of the President, withdrawn—

267. The Hon'ble Sir Bijay Chand Mahtab, Maharajadhiraja Bahadur of Burdwan, had given notice to move that the following proviso be added to sub-clause (*1*) of clause 245, viz. :—

"Provided that this sub-section shall not apply to a non-resident raiyat who holds his homestead and holding under different landlords."

He said :—

"I understand, Sir, that no difficulty has arisen in this connection in Orissa, and as this is a matter which I really proposed because some difficulty has arisen in Bengal, I beg to withdraw it."

The motion was then, by leave of the President, withdrawn.

The following motion was, by leave of the President, withdrawn:—

Schedule IV.

268. The Hon'ble Rai Sheo Shankar Sahay Bahadur to move that the words "three years" be substituted for the words "one year" in Schedule IV, article 2 (*b*) (*ii*).

This concluded the debate on the amendments.

*5. The Hon'ble Mr. H. McPherson moved that the Secretary be directed to re-number the clauses and sub-clauses of the Bill, in consecutive order, and to make corresponding alterations in all cross-references thereto.

The motion was put and agreed to.

*6. The Hon'ble Mr. H. McPherson also moved that the Bill, as settled in Council, be passed.

He said :—

"I have now the honour to move, Sir, that the Orissa Tenancy Bill, as amended in Council, be passed. I congratulate the Council on the conclusion

* These numbers refer to the serial number of motions included in the main List of Business.

of the deliberations which have engrossed its attention for four days; I congratulate it on the patience, good temper and, on the whole, fairness of mind that have been displayed throughout the debates. We have perhaps exchanged a few hard knocks in the course of our discussions, but no bones have been broken, and we part good friends. I regard the Bill as a great legislative achievement which settles many vexed questions of law and procedure, and restores order and harmony to the agrarian economy of Orissa. It gives to that portion of the Province the advantages of a self-contained agrarian code, and puts an end to many existing causes of dispute, unrest and strife. Many hard things have been said of the Bill in this Council, and there has also been some attempt to prejudice the public mind regarding it through the public press. We have been told that it is revolutionary, where it merely embodies existing custom. Insinuations have been made that it is the work of *ex*-settlement officers who recognize their own mistakes, and are anxious to remove them from observation. The debates have shown that no grounds exist for these insinuations. But the criticism which has least foundation of all, is that the Orissa public and the Council have been rushed by this legislation, and that public opinion has been stifled. I would ask the Council, in this connection, to compare the history and progress of the Bill with those of the Chota Nagpur Tenancy Act,* which was an equally long measure and supplied a complete agrarian code to a Division which is even more divergent from the rest of Bengal than Orissa is. The Chota Nagpur Tenancy Bill, after being before the public for twelve months, during which it was considered in local committees, was introduced into Council in July 1908. It was considered in Select Committee for three weeks, and was passed at a single sitting of the Council, only five weeks after it was first introduced. The Orissa Bill, on the other hand, has been before the Orissa public for more than three years. It was introduced in Council over eight months ago, circulated to local bodies, considered in Select Committee for nearly two months, and has now engaged our attention in Council for four long sittings.

Orissa will shortly be included within the boundaries of the new Province of Bihar and Orissa, and it has been vehemently insisted upon that the administrators of the new Province should have been consulted regarding the Bill. I am in a position to state that His Honour Sir Charles Bayley *has* been consulted regarding the Bill. The Bill and all the papers connected with it have been laid before His Honour, and he has agreed that it should be passed by this Council. Sir, as one who has had close connection with Orissa for ten out of twenty years' service, and is likely to have some share in the future administration of that province, I personally consider it a great cause for thankfulness that the legislative proposals of the last three years have been brought to fruition before this Council is dissolved, and that Orissa has had the benefit of all the wisdom and experience which remain behind in Bengal. To you, Sir, in especial, we owe a great debt of gratitude for the fairness and patience with which you have presided over our deliberations and for the guidance and assistance which your personal knowledge of Orissa has enabled you to bring to bear on our proceedings. With these words, Sir, I move that the Bill, as amended in Council, be passed."

The Hon'ble Sir BIJAY CHAND MAHTAB, MAHARAJADHIRAJA BAHADUR of BURDWAN, said:—

"Your Honour, before this Bill is passed into law, I feel I ought to say a few words. First of all, let me congratulate the Government on having at last got a complete agrarian code for Orissa, and I hope that the new Act will ameliorate the condition of both the landlords and tenants in Orissa. I regret that the Government should have insisted upon the inclusion of the 'Maintenance of Land Records' Chapter in the Bill. Certain innovations have been introduced in this rent law, which do not exist in the Bengal Tenancy Act,† and I apprehend that before very long we shall have some of the new provisions in this Bill thrust on us in Bengal. The 'Maintenance of Land Records' Chapter, the chapter dealing with communal rights and the express

* *i.e.*, Ben. Act VI of 1908.
† *i.e.*, Act VIII of 1885.

[*Rai Sheo Shankar Sahay Bahadur.*]

provision as to the raiyati transfers of occupancy-rights will, if introduced into Bengal, have even more far-reaching effects than in the present case; but we must reserve our comments and judgments until the psychological moment arrives.

"I take this opportunity of warmly thanking Messrs. McPherson and Kerr for the invaluable help and unfailing courtesy shown to us members of the Select Committee during the meetings of that Committee. Although we shall still have Mr Kerr with us, I am sincerely sorry that my friend, Mr. McPherson, is going over to Bihar, for I have a warm regard for him and shall miss him here: but I hope he will have a successful career in Bihar. The President of our Select Committee, the Hon'ble Mr. Slacke, is going to retire from the service, and as I have had the honour of his friendship, I cannot help saying how sad I feel that another old friend and well-wisher is leaving the province. Our sincere thanks are also due to Mr. Watson, the Secretary of this Council. His help in the Select Committee was invaluable; and I think we, one and all, non-official members of the Select Committee on the Orissa Tenancy Bill, have reason to be particularly grateful to Mr. Watson for the printed copies of his 'Notes' on each day's proceedings which he so kindly and promptly got ready for our discussion and reference, and which we all found most useful."

The Hon'ble RAI SHEO SHANKAR SAHAY BAHADUR said:—

"Sir, first of all I beg to congratulate the Hon'ble Member in charge of the Bill on the termination of his labours. We are grateful to him for his courtesy, and his patient consideration, during the debate, of the amendments put forward by non-official Members.

"Sir, coming to the Bill itself, which is about to become law, the Hon'ble Member in charge of the Bill, when referring it to the Select Committee, called it a 'non-contentious' Bill. The amendments made by the Select Committee, the new clauses added by it, the various amendments which the Hon'ble Member himself allowed, and which led to the re-drafting of several clauses during the passage of the Bill here, and lastly our four days' vigorous work in Council, hardly justify the Hon'ble Member's expectation that this would be a non-contentious Bill.

"Sir, the new Bill contains many provisions, such as the right of transfer of occupancy-rights, which did not form part of the Bill as introduced in Council, and which it was then distinctly said would remain untouched. With regard to those provisions of the Bill to which the sanction of the Government of India has not been specifically obtained, and with regard to the revolutionary changes in the existing law, such as the provisions regarding produce-rent, the transfer of jurisdiction from the Civil Courts to the Executive head of the district in the case of common managers, the denial to co-owners of their rights to deal with their property by sale, gift or otherwise, or to apply for partition, and such other provisions, I do hope and trust that His Excellency the Viceroy will consider them before giving his assent to the Bill.

"Sir, the motion before the Council is of a formal character, and, under ordinary circumstances, a motion like this cannot be resisted. But, Sir, is the position normal? If the opposition to this formal motion is unusual, the occasion is also unique. The position is unprecedental, and there is, as the lawyers would say, no case-law or ruling to guide us in this respect. We have, therefore, to fall back on our own resources, namely, our common sense.

"The Hon'ble Member in charge of the Bill, in his speech of 17th January last, said:—

'In the circumstances, it is the Council's duty, I submit, not to leave this Bill as a legacy of trouble to the builders of the new Province, but to apply itself earnestly to the task of shaping the Bill, so that it may well form a parting gift from Bengal.'

'Sir, in the language of the Hon'ble Member in charge, you have shaped the Bill, and the Bill you have shaped, the Bill which is the result of the experience of your officers, may well be left, as it is, to form a parting gift from you. If you go a step further and pass it into law, your parting gift will not

only lose its graciousness, but probably the new Lieutenant-Governor and his Councillors will resent the fact that, on almost the last day of your existence, you should have passed it into law and thus issued a command on him to carry it out.

"If we were sure that, if the Bill is not passed immediately and the law is not put in force at once, disastrous results would follow, the matter would be different. But it is not shown that any immediate necessity is felt. Why not, then, hand over the Bill, as considered by the Council, to the new Lieutenant-Governor and let him and his Council pass it into law?

"I therefore oppose this motion."

The Hon'ble MR. MADDOX said :—

"I will only say a few words. I think, Sir, that Government is to be congratulated that remedies have been provided after the injustice that has at times been done to Orissa in the past. We have now framed a self-contained law which will remove the overlapping and the confusion created by the piecemeal introduction of sections from the Bengal Tenancy Act.* I would only like to say, Sir, that we all wish Mr. Das a long and happy career in which to continue to carry out the ideals and the purpose which he has already stated here, namely, the communication to Government of the feelings and wishes of the people of Orissa, and the communication to them of the views of Government. I hope he will continue to do so for many years."

The Hon'ble MR. DAS said :—

"Sir, I congratulate the Hon'ble Member in charge of the ill, and those who were associated with him in carrying this measure through the Council, on the earnestness of their wishes and their work, and I personally take this opportunity to express our gratitude to our admirable Secretary and to the Hon'ble the Legal Remembrancer, to whose intercession I owe the introduction of the sub-clause which will give a retrospective effect to clause 165A, and which occupied so much of my time when I moved for the postponement of the Bill.

"The Hon'ble Member in charge of the Bill has referred to hard knocks. I suppose old men are accustomed to hard knocks, and can stand those knocks at least as well as young men. Far be it from me not to appreciate the desire on the part of Government to do justice to Orissa My principal ground of complaint has been that, on account of the shortness of time at the disposal of this Council, many things could not receive the attention which I am sure they would have received at the hands of Your Honour and of this Council, if the life of this Council had been a little longer. Nobody knew that we were going to have these administrative changes. Consequently, we were not prepared for this state of things. I will just mention one instance. When this Bill was referred to the Select Committee, I was bed-ridden, and one of the other Members for Orissa asked the Select Committee for the postponement of the discussion for a fortnight. I feel confident that, under ordinary circumstances, Your Honour would have granted the request, that is to say, had it not been that Orissa was to be transferred so soon. My position was that I was quite unable to do my duty towards the people whom I represent—that duty to which the Hon'ble Mr. Maddox has alluded. I cannot say to the people of Orissa that I have done my best. Certainly, it was in the power of the Government to ask me to resign and appoint another person who could have taken up the work at once,—the work, as I said before, being of a peculiarly difficult character.

"It has been admitted that, on account of the Revenue Settlement and of the Revisional Settlement having been made under the provisions of the Bengal Tenancy Act,* certain errors were committed, and that one of the objects of this Bill is to correct those mistakes. Now, that in itself is difficult work. Once the existing law is disturbed, it is really a work of validation that is being done, and it requires a great deal of time and attention on the part of lawyers to do that. I do not like to say anything more now, because perhaps I have been considered the greatest obstructionist in this Council to the easy passage of the

* *i.e.*, Act VIII of 1885.

[*Kumar Sheo Nandan Prasad Singh.*]

Bill. All that I can say is that I do hope that the Bill will work as successfully as those who are responsible for it expect it to do. I do hope that there will not be thousands of cases over the communal lands of Orissa; for the result, in that case, would be the ruination of the poor people. I believe the people have a right to say to the Government: 'Do not leave dubious points of law to be settled by Law Courts, when you are enacting a piece of legislation,' for the Law Courts are expensive. People have to pay for case law while they don't have to pay for law which is passed on the anvil of legislation. It makes all the difference, and in the case of the poor people of Orissa the difference means a great deal. I regret very much that I cannot divest myself of the feeling that there has been a certain amount of hurry and disputation in connection with this Bill. I do not like to use the word 'rush,' as I know it is not liked, just as the word 'maintenance' is not liked, and raises angry passions when mentioned. I would, however, mention here that we have been under the necessity of hearing a defence of the maintenance chapter from the Hon'ble Mr. Kerr and I have been able, though at the last moment, to induce the Hon'ble Member in charge of the Bill to give retrospective effect to clause 163A. What do these facts show? These facts show that the Bill had defects which could not be solved till the last moment. I do not like to say anything more. I only hope that the Bill will prove to be a blessing to the people of Orissa, as it is expected to be by Government."

The Hon'ble KUMAR SHEO NANDAN PROSAD SINGH said:—

"Your Honour, I beg to rise to support the motion that the Orissa Tenancy Bill be passed into law. In doing so, I must, at the outset, express regret that the Hon'ble Member in charge of the Bill could not see his way to accept some of the important amendments moved by the representatives of Orissa and other non-official Members of the Council. I have also to explain why I have purposely refrained from taking any part in the discussion of the various amendments on the list. The chief reason that led me to that course was that I did not like to take up the valuable time of the Council unnecessarily, conscious as I was that the task of protecting the vested interests of the people of Orissa was in very able hands.

"I have now to offer my congratulations to the Hon'ble Mr. McPherson in having piloted this important Bill through the Council in such a remarkably able way. I hope we will all join in wishing him a pleasant holiday on the conclusion of his labours. I may say that it is a matter of special gratification to the people of Bihar that he is coming to us Bihar, with its needs and aspirations, welcomes officials of such wide sympathies as he possesses. While supporting the passing of the Bill, may I express a hope that commutation cases, intricate, difficult and of far-reaching consequence as they are, will be placed in charge of officers of experience? I would also ask that the power of revision of the record-of-rights may, in practice, be fixed at sufficiently long intervals to minimise trouble to the parties concerned. Of course it must be admitted that when once a record-of-rights is prepared, it has to be maintained up-to-date by periodical revisions.

"Now that our work in the Council is finished, and as the Council becomes *functus officio* in a few days hence, may I be permitted, Sir, to thank Your Honour most sincerely for your great and unfailing courtesy to us? We, the people of Bihar, humbly hope that we may have the honour at some later date of welcoming you as our Lieutenant-Governor.

"We are deeply grateful to Government for giving to Bihar her just rights. True, the people of Bihar and Bengal have been bound together from time immemorial under Hindu Kings, under Muhammadan Kings, and, above all, during the last 150 years of *Pax Britannica*. Further, the culture of my Bengali friends has been an incentive to the people of Bihar, and, in the parting, there must be a feeling of regret on this account. But now, as Bihar, which yields to none in its loyal devotion to the Crown, will rely on her own resources, I am confident that she will not fail to occupy the position which is her just due."

[*Maulvi Saiyid Muhammad Fakhr-ud-din; Rai Baikuntha Nath Sen Bahadur.*]

The Hon'ble MAULVI SAIYID MUHAMMAD FAKHR-UD-DIN said:—

"Sir, I rise to oppose the motion. The Hon'ble Member in charge of the Bill should no doubt be congratulated on the happy and successful termination of our discussion of, and deliberation on, the several clauses of the Bill, but I do not think I shall be justified in congratulating the people of Orissa on having this Bill passed into law. There are certain innovations in the Bill which do not find a place in the existing laws of the country; the introduction of certain new clauses in Select Committee, and even the re-drafting of certain clauses after the Select Committee had presented their report—all these points, and the introduction of a new Chapter to which the Hon'ble the Maharajadhiraja Bahadur of Burdwan has referred, ought to have taken a little more time for consideration. The postponement of the consideration of this Bill in this Council was twice asked for—on the first occasion, it was proposed by the Hon'ble the Raja of Kanika, when the Bill was being referred to a Select Committee, and I had the fortune, or rather the misfortune, to support that motion; on the second occasion, it was asked for after the submission of the report of the Select Committee, when we found that, out of the six non-official Members, five had thought fit to submit notes of dissent, only one non-official Member agreeing with the official Members. We were under the impression that the motion for postponement would have been accepted by the Government, because, on the first occasion, when the motion was moved, Your Honour was pleased to observe to the Hon'ble Mover, 'let the report of the Select Committee be presented; and if, then, the Hon'ble Member thinks that the report is not satisfactory, and that further consideration is necessary, a further postponement may be asked for by him.' But unfortunately that request was not acceded to, even when it was moved for the second time.

"When no less than 268 amendments were proposed, the Hon'ble Member in charge of the Bill began to complain that very few of those amendments came from the Orissa Members, the majority having been proposed by Bihar Members, and it struck him as passing strange that Bihar Members should take so keen an interest in the discussion of the Orissa Tenancy Bill. I submit, Sir, that Bihar Members took a keen interest in the discussion inasmuch as they form part and parcel of this corporate body; and, as such, they have as much right to propose amendments and to discuss amendments as any other Members in this Council. The next reason why the Bihar Members took a keen interest in the Bill was that if, in Bihar, a Bill containing similar provisions be thrust on them hereafter, it may not be said that the Bihar Members, in whose presence the Orissa Tenancy Bill was passed, did not raise any objection, but gave their implied acquiescence or consent to the passing of undesirable clauses to which the Hon'ble the Maharajadhiraja Bahadur of Burdwan has referred to in his speech. Then the third ground for our taking interest in the discussion was that Orissa now forms part and parcel of Bihar, and therefore it was our duty to see that our co-provincialists, the people of Orissa, did not suffer by any enactment passed in the present Council.

"Now, as all our proposed amendments have been discussed, the Council should ordinarily be asked to pass this Bill. But the rights which the people of Orissa hitherto possessed,—the right of selling their property, the right of applying for partition in case of the appointment of common managers, the question of the custom of occupancy-rights,—all these, I submit, ought properly to be considered by the new Government with its new Council. This Bill will now be passed into law, and we have seen the fate of our amendments all along; but, at the same time, I think it is our duty to enter our protest against the passing of this Bill. With these words, Sir, I oppose the motion."

The Hon'ble RAI BAIKUNTHA NATH SEN BAHADUR said:—

"I do not wish to give my vote on the motion without making a few observations. There is not the slightest doubt that the motion will be accepted, and the Bill passed. When this Bill is passed and becomes law, it will be, as it were, the fourth edition of the Tenancy Act, the Bengal

[*Mr. Dip Narayan Singh; the President.*]

Tenancy Act,* the Eastern Bengal and Assam Tenancy (amendment) Act,† the Chota-Nagpur Tenancy Act ‡ and the Orissa Tenancy Act. This will be the fourth and therefore the latest edition, and will in future be considered as the best edition. There are certain apprehensions which naturally arise in the minds of those who will be governed by this Act. This Bill, amongst other things, deals with four subjects which have introduced innovations, one of which I am forced to call a revolution. Transferability with regard to rights of occupancy and tenures has been considered and introduced in this Bill in a form which does not exist in the other Acts. Then the appointment of a common manager deals with the subject in rather a new way. Its enforced artificial disqualification of co-owners is a feature which seems to us to be very objectionable. I have had to refer to the curtailment of rights of testamentary disposition, and I still maintain that position. Then the conservation of communal rights is a provision in this Bill that is of a striking nature. *Sarbadasadharan* lands, or the enjoyment of communal rights, will perhaps, as has been suggested by the Hon'ble Mr. Das, give rise to litigation. Then the chapter, as regards land records, or the maintenance of the record-of-rights will be a fruitful source, I won't say of oppression but of distress to the poor tenants. Annual repetition of the record of rights would be perhaps an impossibility, because whoever has any experience with regard to these record-of-rights knows that records cannot be completed within a period of three years. These are the main features in which innovations have been introduced, and I am afraid that hereafter, in the different provinces of Bengal, the principles laid down regarding these four different subjects may be sought to be introduced. It is for that reason that I raise my voice in dissent with regard to the principles underlying these provisions. Though I am willing that the Bill should be passed, still my vote will be that the Bill be passed with, as it were, this verbal 'note of dissent'."

The Hon'ble Mr. Dip Narayan Singh said:—

"Your Honour, I also beg to oppose the Orissa Tenancy Bill. It is not in any vindictive mood that I and my friends from Bihar have persisted in opposing this Bill even at this stage, for I hope and believe that we Biharis know how to fight hard, yet to submit gracefully to a fair defeat. But, Sir, there is a lurking doubt in my mind that the fight has not ended, so far as this Bill is concerned. I beg to put before the Council the doubt that has arisen in my mind. In the Validating Act§ that was passed by the Law Member in the Viceroy's Council the other day, it was enacted, I believe, that all laws now in existence should continue to remain valid in the two provinces that are to come into being on the 1st of April next. Sir, this Orissa Tenancy Bill is not yet in existence, and I do not know how far the passing of this Bill by this Council to-day will be valid, unless it is ratified by His Excellency the Viceroy before the 31st March."

The President said:—

"It is not for us to discuss a sphere of action which appertains to His Excellency alone.

The Hon'ble Mr. Dip Narayan Singh said:—

"I do not intend to do so, but we hope that it may be possible that this Bill may even now not become law."

The President said:—

"If the Hon'ble Member entertains any such hope, I must request him to retain it in his own breast. Speculations of this kind are not a matter for discussion in this Council."

The Hon'ble Mr. Dip Narayan Singh said:—

"I accept Your Honour's ruling. We have, however, other reasons for not supporting this Bill that have already been discussed by my other friends

* i.e., Act VIII of 1885.
† i.e., E. B. and Assam Act I of 1908.
‡ i.e., Ben. Act VI of 1908.
§ i.e., Act VII of 1912.

[*Mr. Dip Narayan Singh; Mr. H. McPherson; the President.*]

from Bihar, and I do not wish to take up any more time of the Council. With these words, and in full agreement with the remarks made by my friend to the right* as to the general good feeling that has existed in this Council during the short time we have been here, I beg to oppose the passing of this Bill."

The Hon'ble MR. MCPHERSON said:—

"Sir, I do not propose to detain the Council by replying to the remarks which have been made regarding the Bill, or to the various criticisms that have been passed upon it. I wish only to refer to a few personal matters. I should like first to refer to the Hon'ble Mr. Das' complaint that the proceedings of the Select Committee were not postponed till he recovered from his illness. As Mr. Das wanted an adjournment of one month, we had practically to decide between acceding to his request, or abandoning the Bill which, as we had already decided in Council, should be proceeded with. We were, therefore much to our regret, unable to accede to his request The attitude of the Hon'ble Members from Bihar has been brought up again by the Hon'ble Maulvi Fakhr-ud-din, but I do not seek to discuss the subject further. We have already had considerable enlightenment regarding the reasons for the present attitude of the Bihar Members. Finally, I wish to thank Hon'ble Members for the kind way in which they have referred to my connection with the Bill, and to say that, if credit is due to any one for the passing of the Bill through Council, it is due in great measure to my hon'ble friend, Mr. Kerr, who has taken a very heavy portion of the burden off my shoulders.

"With these remarks, I beg to move that the Orissa Tenancy Bill, as amended in Council, be passed."

The PRESIDENT said:—

"Gentlemen of the Council, before I put the motion, I wish to say a few words with reference to my personal connection with the Bill which, I trust, will now be passed. I wish to take my full share of the responsibility for initiating this Bill, and, indeed, for having brought it forward in Council and for having it proceeded with by the present Council; and I wish to say that I think that possibly (though, of course, a measure of this kind has many different origins) I had as much to do as any one individual with the origin of the Orissa Tenancy Bill.

"For some years previous to 1908 I served in Orissa, and as my connection with Orissa has been referred to from time to time, I desire at once to disclaim the character of an expert on Orissa land-law. I have not served in that country long enough, nor been able to give sufficient concentration to the problems of Orissa land-law to be able to claim any expert knowledge of it; but I have served for some years in the Division, and have helped to administer the law, and have thus been fully conscious of the defects of the latter and of the need for reform therein. The matter which first came to my notice was the exceedingly unfavourable position in which certain classes of sub-proprietors and tenure-holders were placed. I instance the *bajiaftidars*, for whom Mr. Das has expressed so much solicitude—solicitude which they in fact most justly deserve; and I thought of enquiring into the matter and of obtaining the opinions of people who have spent the greater part of their lives in Orissa. When the Bengal Tenancy Act† was passed in 1885, it was passed with practically no reference to the special circumstances of Orissa. I do not think even that there was in the Council, as then constituted, any one with a special knowledge of the circumstances of Orissa and of its various classes of sub-proprietors and tenure-holders; of their rights or their requirements; or of their relations with the zamindars on the one hand, and the cultivating raiyats on the other. These peculiar relations and circumstances of Orissa having thus not been specially considered in the Bengal Tenancy Act,† there were no direct provisions of law which could be made fairly applicable to them. The result was that it came to be found that some of the

* *i.e.*, the Hon'ble Maulvi Sayid Muhammad Fakhr-ud-din.
† *i.e.*, Act VIII of 1885.

classes to which I have referred were obviously suffering very much in their interests, and the general tendency was that they were being reduced to a lower status, and that, slowly but surely, sub-proprietors and tenure-holders were being degraded to the position of ordinary raiyats. I succeeded in attracting the attention of superior authority to some of these grievances, and it was decided that a remedy was required, and it was then considered what form the remedy should take and how it should be effected. That, I think, goes back perhaps to 1906 or 1907. In the meantime, attention was constantly directed to the uncertainties of the law in Orissa. Act X of 1859* and Ben. Acts VI of 1862† and VIII of 1865‡ were still partially in force and governed the trial of rent suits, while a number of the provisions of the Bengal Tenancy Act§ had, subsequently to 1885, and in the hope of improving the relations between landlords and tenants in certain particulars, been introduced from time to time. It was, however, constantly found that the provisions and procedure of one Act were in conflict with the provisions and procedure of another, and trained lawyers frequently were obliged to admit that they were unable to advise what the real law governing any particular case was; how far, for instance, the Rent Act of 1859‖ was still in force, or how far the new provisions of the Bengal Tenancy Act§ modified or abrogated it. As each fresh difficulty arose, the simplest way to get over it appeared to be the introduction of another provision from the Bengal Tenancy Act,§ and constant pressure was put upon Government, both by officials and non-officials, to apply more and more of these provisions to Orissa in the expectation of remedying the admittedly unsatisfactory condition of the land-laws. At that time I left Orissa and became Revenue Secretary to this Government, and it became apparent to me that we had arrived at a point of confusion that was undoubtedly most injurious to the interests of the people of Orissa, and that one of two things had to be done—either the Bengal Tenancy Act§ must be enforced wholesale, or Orissa must have a Code of its own.

"I have already explained that, in certain particulars, and because of the special local requirements of Orissa, the Bengal Tenancy Act,§ applied wholesale, appeared to be clearly unsuitable, and it seemed to follow that Orissa ought to have a Code of its own. That Code would, no doubt, embody most of the leading principles of the Bengal Tenancy Act§—the principles of which Act, it is admitted, have been carefully thought out, have stood the test of time, and are generally suitable to most of the relations between landlord and tenant. But every part of the country has got its local customs and peculiar agrarian characteristics, and no one Code can possibly provide for all cases. It therefore seemed that a special Code should be prepared which, while embodying the general principles of the Bengal Tenancy Act,§ so far as they were applicable, would provide for the special circumstances and peculiar features of the Division of Orissa.

"I made that suggestion, as Revenue Secretary, to Sir Andrew Fraser, the then Lieutenant-Governor, and he thereupon set on foot the special enquiry made by Mr. Maddox, from which this Bill, which is now before us, has sprung.

"I had very little to do with the exact form which the Bill has taken, but I do find satisfaction in the fact that I had something to do with the initiation of a movement to which we are here to-day, if this motion be carried, to afford our final sanction.

"I realise that a new self-contained agragrian Code is a matter of very great difficulty, and requires very close consideration; but I do not forget that this Bill has now been before Government for nearly four years, and has been, during that time, the object of the most exhaustive inquiries and the most earnest attention on the part both of officials and non-officials alike. I admit, indeed, that very probably it may contain imperfections. I take it that few Acts have been passed which have not had their imperfections.

---

* *i.e.*, the Bengal Rent Act, 1859.
† *i.e.*, the Bengal Rent Act, 1862.
‡ *i.e.*, the Bengal Rent Recovery (Under-tenures) Act, 1865.
§ *i.e.*, Act VIII of 1885.
‖ *i.e.*, Act X of 1859.

A Bill of this size is unlikely to escape them, but I doubt if these are serious compared with the importance and effectiveness of the main provisions which are designed to afford much-needed relief to the people of Orissa. I recognize the care with which the Bill has been discussed both in Select Committee and in Council. It has been very ably conducted by the Hon'ble Member in charge and by the other official Members who have assisted him, particularly the Hon'ble Mr. Kerr. I recognise also the very close attention that has been given to it by the non-official Members who took part in the Select Committee, and by those who have discussed its provisions in Council. With regard to the extremely critical attitude that has been taken by the Bihar Members, I think that it was perfectly natural that they should feel that what has been applied to Orissa to-day may possibly be applied to them to-morrow. But, if I may venture a word of advice, I would impress upon them the desirability of remembering, now that their fortunes are bound up with Orissa, that different cases and different circumstances require different decisions; that one invariable Code cannot be made to suit all parts of a great Province; that what is good for Orissa may not necessarily be good for Bihar; and that they ought, therefore, in dealing with the different parts of their new Province, to be prepared to broaden their point of view and to realise that certain remedies may be necessary and desirable for their neighbours, even though they may be unpalatable to themselves; and thus to refrain from being influenced solely by the idea that the same remedies may be forced upon them, and to oppose the latter on that ground alone. I am not, indeed, aware that they have any grounds for supposing that those provisions of the Orissa Tenancy Bill, which have been inserted because of their peculiar fitness to the needs of Orissa, will be forced upon them in future; but I do hope that, to Orissa itself, the Bill will be a real benefit, and that this law will tend in future to straighten out many difficulties that have afflicted the people in the past."

The motion was then put and agreed to without a division.

The Bengal Mining Settlements Bill, 1912.

*7. The Hon'ble Mr. Cumming moved that the report of the Select Committee on the Bill to provide for the sanitation of mining settlements in Bengal be taken into consideration.

He said:—

"Sir, at this stage it is not necessary to add anything to what was stated when the report of the Select Committee was presented."

The motion was put and agreed to.

*8. The Hon'ble Mr. Cumming also moved that the clauses of the Bill be considered in the form recommended by the Select Committee.

The motion was put and agreed to.

†1. The Hon'ble Rai Baikuntha Nath Sen Bahadur moved that after clause 3 (*5*) the following be added, namely:—

"(*5a*) One of the persons appointed under sub-section (*1*) shall be the Civil Surgeon of the district in which the mining settlement lies."

He said:—

"Sir, my object in moving this amendment is simply this, that there always ought to be a Sanitary officer of the Government on the Mines Board of Health, and that therefore the Civil Surgeon ought to be made *ex-officio* member of the Board. I find from the opinions collected that the Deputy Commissioner, Manbhum, the Sanitary Commissioner, Bengal, and the District Magistrate of Burdwan are all of the same opinion, and they also think that there ought to

* These numbers refer to the serial number of motions in the main List of Business.
† This number refers to the serial number of the amendments in Annexure B to the List of Business.

be a medical officer on the Board. The Civil Surgeon of the district is the chief medical officer of the Government, and he is qualified to know much better about questions of sanitation than anyone else. Of course, with regard to the District Magistrate or Subdivisional Magistrate, the question stands on a very different footing altogether. I propose therefore that this amendment be accepted, and that the Civil Surgeon be made *ex-officio* member of the Board."

The Hon'ble MR. CUMMING said :—

"Sir, I quite appreciate the propriety of the proposal of the Hon'ble Rai Baikantha Nath Sen Bahadur, but he appears to have overlooked the principle which I mentioned in presenting the report of the Select Committee, viz., that the Bill was to be as elastic and flexible as possible. To that end the original proposal that the District Magistrate or the Subdivisional Officer should be appointed by statute has been relinquished. It may, however, be said, as the Hon'ble Member has said, that a medical man should certainly be on the Mines' Board of Health. I quite agree with the Hon'ble Member, but it need not follow that the Civil Surgeon would in all circumstances be the officer whose services would most conveniently be available for appointment. There are such officers as the Deputy Sanitary Commissioner and so on, and it may be that, in some cases an Indian Subordinate Medical Service officer, who has special knowledge of this subject of sanitation, may be available.

"I therefore do not recommend to the Council the acceptance of his amendment."

The motion was then put and lost

*2. The Hon'ble Rai Baikuntha Nath Sen Bahadur moved that the word "shall be punishable on conviction" be inserted after the word "sub-section" in line 10 of clause 17(3).

He said :—

"Sir, my object is not to oppose the provision in the Bill for punishment for repeated breaches, but simply to give legality to the provision I beg to draw the attention of the Council to a cognate provision in the Bengal Municipal Act † Section 218 of the Bengal Municipal Act† lays down—

'Whoever, being an owner or occupier of any house or land within a municipality, fails to comply with a requisition issued by the Commissioners under the provisions of sections 202, 204, 206, 207 or 208 (2), shall be liable, for every such default, to a penalty not exceeding fifty rupees, and to a further penalty, not exceeding ten rupees, for every day during which the default is continued after the expiration of eight days from the date of service on him of such requisition.'

"With regard to this provision, I refer the Council to the case reported in I. L. R., Calc., page 565, where their Lordships recorded this ruling—

'A rule has been granted to consider the order regarding the daily fine. There are several reported cases in this Court on the subject, and it has been held that an order for payment of daily fine is illegal, inasmuch as it is an adjudication in respect of an offence which had not been committed when such order was passed.'

"Then their Lordships discussed the question and referred to other cases. In this connection I would also beg to draw the attention of the Council to the cognate provision in the Calcutta Municipal Act.‡ The wording is somewhat different there—the wording of section 565 of the Calcutta Municipal Act‡ is to this effect :—'Whoever, after having been convicted of a certain offence, continues to contravene the said provisions, shall be punished for each day after the first during which he continues so to offend with a fine which may extend to, etc.'

* This number refers to the serial number of the amendments in Annexure B to the List of Business.
† i.e., Bengal Act III of 1884
‡ i.e., Bengal Act III of 1899.

[*Mr. Cumming; Rai Baikuntha Nath Sen Bahadur*]

"Now, such being the case, my amendment simply proposes, in order to give legality to this further fine, that after the word 'sub-section' be added the words 'shall be punishable on conviction': that is, to lay down that after the first conviction there should be another prosecution and another conviction for the continuing offence. I think the Council should consider whether or not such a provision is necessary in order to make this clause legal."

The Hon'ble MR. CUMMING said:—

"Sir, it is possible that the Hon'ble Member has to some extent been under a misapprehension. The Bill does not contemplate that any one can be punished without a conviction, or that any one can be punished for any neglect which may take place in the future. On the contrary, it is definitely stated that the breach must be proved to have been persisted in, that is to say, it must be so proved in a Court. But, apart from that, the Bill reproduces the exact words of the Indian Mines Act of 1901.* As that is an Imperial Act, it was thought that we should be on sure ground in repeating the language of that Act; and that, if there were any departure from the language of that Act, it might hereafter be assumed in the Courts that the departure suggested a different meaning from that in the Mines Act. The ruling based on the Municipal Act† to which the Hon'ble Member has referred was considered. It is not intended that there should be any order directing a penalty regarding a future neglect; as I have explained, it is regarding past neglect to which the second portion of the clause refers. The intention of the Hon'ble Member is to make the language free from ambiguity. All I can say is that, in my view, the clause is sufficiently clear as it stands, and that, in the opinion of the legal advisers of Government, the amendment is unnecessary."

The Hon'ble RAI BAIKUNTHA NATH SEN BAHADUR said:—

"Sir, the Hon'ble Member in charge of the Bill considers that the amendment proposed is superfluous. The intention of the Government is that there should be a subsequent conviction. Well, intention, according to legal interpretation, has to be gathered from the language employed. Here in this case, to which I have made reference, the provision is that the breach would have to be proved. The Hon'ble Member in charge of the Bill says that it must be proved in a Court of Justice. It may, however, be considered hereafter that it must be proved before the Board—the Board to decide after proof of the conviction if there has been a breach. So that it is not safe to rely upon inference. I therefore suggest that the language should be 'shall be punishable on conviction.' Then it has been urged by the Hon'ble Member in charge of the Bill that this provision is in the Indian Mines Act.* Well, if there is such a provision and if there is this flaw in it, that fact would not make it legal in a subsequent Act; and if the flaw is pointed out, it is much better that there should not be any ambiguity on the subject. I think, therefore, that the Council should consider whether or not the amendment proposed by me should be accepted in order to make the clause unambiguous."

The motion was then put and lost.

‡9. The Hon'ble Mr. Cumming moved that the Secretary be directed to re-number the clauses and sub-clauses of the Bill in consecutive order, and to make corresponding cross-references thereto.

The motion was put and agreed to.

‡10. The Hon'ble Mr. Cumming moved that the Bill, as settled in Council, be passed.

The motion was put and agreed to.

This concluded the *Agenda* on the List of Business.

* i.e., Act VIII of 1901.
† i.e., Bengal Act III of 1884.
‡ These numbers refer to the serial number of the motions in the main List of Business.

[*Babu Kirtanand Sinha; Maulvi Saiyid Muhammad Fakhr-ud-din.*]

ago, the fates of Orissa, Bihar and Bengal have been linked together. Biharis, Uriyas and Bengalis have always thought of each other in sorrow and in joy, and have always afforded mutual assistance to one another in weal and woe. We know very well that during the controversy regarding the Bengal Tenancy Bill, it was Bihar which was a tower of strength to us, and we have received material assistance, pecuniary and otherwise, from our Bihari friends; and thus, whatever may be said of the modification of the Partition—our loss is accentuated by the creation of a new province, by the lopping off of a larger slice from the old province, and by the dethronement of Calcutta. Under all these circumstances, I beg to express our deep sorrow that this is the last occasion on which we shall have the opportunity of meeting our Bihari and Orissa friends in Council, and that we shall have no more chance of meeting under the guidance of a common Ruler. However, we shall never forget the feelings, the deep feelings, of esteem, regard and admiration, which we have hitherto always entertained for our Bihari and Orissa friends. With these words I beg to express again my feelings of regret at our parting."

The Hon'ble BABU KIRTANAND SINHA said:—

"I would like to associate myself with what has fallen from my honourable friends. The long deliberations of the Council have made most of us tired, but we are very sorry that we shall not have the opportunity to meet our Bihari friends again in Council, and we shall miss them very much in the new province of Bengal. On behalf of the landlords of Bengal, I thank your Honour for your kindness towards us, and I thank the Hon'ble Members, both official and non-official, for their kind advice to us and for the assistance they have given us."

The Hon'ble MAULVI SAIYID MUHAMMAD FAKHR-UD-DIN said:—

"Sir, this is a most critical occasion, and my heart is full. I had no desire to say anything at this time, but I think I should be lacking in my duty if I did not express my deep satisfaction at the services rendered by the official Members, and my thanks for the help which we have received from time to time from your Honour and your Honour's predecessor in office. This is a moment when my Bengali friends are saying farewell to us; this is the last time we shall meet in the Bengal Legislative Council, and I feel, Sir, when I realise that there will be no further occasion to sit with my Bengali friends in this Council, that we are highly indebted to those Bengali friends, especially to those who are old Members of the Bengal Legislative Council, for we have received much help and much instruction from their example. As for you, Sir, we knew you, not because you happened to be in Bengal holding the post of Chief Secretary, then the high post of Member of the Executive Council, and lastly the highest post of Lieutenant-Governor. We knew you even before, when you were for some time in our midst in Bihar. We knew your amiable disposition, we knew your courtesy, so much appreciated when you were in Bihar, and we express our satisfaction that, even in this Council, you have extended the same courteous kindness, the same sympathetic feeling towards us in our deliberations. No doubt we have been defeated from time to time in moving our resolutions and in moving our motions, but we are alive to the fact that, in spite of our defeat, the Government has been all along taking a keen interest in those motions, and that something has been done. Therefore, we think that the Members of the Bengal Legislative Council have done much work for the progress of their countrymen. Now, I thank you very much, Sir, for all the help which you have given to the Members of the Council from time to time, and I thank my Bengali friends, especially the Hon'ble Maharajadhiraja Bahadur of Burdwan, who has been bidding us farewell, for expressing his sympathy towards the Members from Bihar."

[*Rai Sheo Shankar Sahay Bahadur; Rai Sita Nath Ray Bahadur.*]

The Hon'ble RAI SHEO SHANKAR SAHAY BAHADUR said:—

"Sir, as this is not only the last meeting of this Council, but as we, the Members from Bihar and Orissa, will never again have an opportunity of sitting side by side with Members from Bengal, I hope you will permit me to make a few observations. We Bihari Members come from the backward province of Bihar, and we are not only backward ourselves, but one and all of us are new recruits to Council work, and had no previous experience when we entered this Council two years ago. I beg, therefore, most respectfully to offer our sincere thanks to you, Sir, and to your illustrious predecessor, for your very kind and courteous treatment, and for the full latitude accorded to our shortcomings, which I admit were manifold. We are also grateful to the official Members of this Council, from whom we have received all kindness. Our acknowledgments are also due to the non-official European Members, who were always indulgent towards us, and from whose business-like treatment of all questions coming before the Council we have profited very much. Lastly, we owe a lasting sense of gratitude to the Members from Bengal, who, in the character of the kindly *karta* of our hitherto-joint-family, have always looked after our interests and assisted us in every possible way.

"Sir, as a result of the royal boons announced at Delhi, which we all value so much, we Biharis are to have our own Lieutenant-Governor and Executive Council. I see that there is a feeling abroad that the Biharis have got much more than they deserved. For my part I am prepared to admit that this is so, and for this boon, we, our sons, their sons and sons' sons, generation after generation, will be ever bound in gratitude to His Gracious Majesty and to His Excellency the Viceroy. We hope and trust that, with the help of ever-merciful Providence and under the able guidance of those Members of your service, Sir, who are going to the newly-created province, we shall, in the language of His Excellency the Viceroy, 'justify the policy of the Government of India by the maintenance of peace and order within our boundaries.'

"Sir, though this is so, and though we are proud of our boon, nevertheless, the parting from old friends and old associates is painful indeed. I would, however, assure our Bengal friends that though, in consequence of the growing largeness of the family and the multiplication of its members, it has been considered best, for the peace and prosperity of both, to separate the joint-family and to constitute two separate families, the junior branch will always, separated though we may be, remember with feelings of gratitude and veneration the senior branch who have for so long had our interests at heart. After all, we are all the products of the beneficent policy of the British Government, and I will speak to my Bengali friends in the language of the Urdu couplet—

'Brather, kya balke ham tum ek jigar hain,
Ekhi nakhl ke dono samar hain;—'

which, when translated, means—

'We are not only brethern, but you and I are of the same heart,
And you and I are the fruits of the same tree.'

"Lastly, Sir, I will ask my Bengali colleagues to continue to entertain towards us the same brotherly feelings which they have hitherto displayed."

The Hon'ble RAI SITA NATH RAY BAHADUR said:—

"Sir, I beg to express my deep sense of obligation to Your Honour for the unfailing courtesy and kindness which you have been always good enough to show us, and for the patience and forbearance with which you have been good enough to listen to our arguments. It is with a sense of great regret that we have to part, Sir, from our Bihari and Uriya friends. Our death-knell has already been sounded: we have already received intimation that this Council will be *functus officio* from the 1st of April. This is the last occasion on which we meet under the roof of a common Ruler, and, as such, it is with feelings of great grief and sorrow that we have to part from our Bihari and Oiissa friends. Since the establishment of British Government 150 years

[*Mr. Golam Hossein Cassim Ariff; Maharaja Bahadur Sir Prodyot Kumar Tagore.*]

Council, as the present waste of time is enormous. A few well-chosen and well-considered words have always greater effect than hours of pedantic oratory, where the point of the argument is drowned in the overflow of utterance. I would draw the serious attention of prospective unofficial Members of Council to the terse, crisp, conclusive and convincing statements made by our official Members, and suggest that they could not follow more efficient guidance in this regard. We have also learnt that, however bitter may have been our debates, they have never interfered with the warmth of our friendships, and I do not think that any one of us can say that we do not leave this Council with a better understanding of one another than when we joined it. We have learnt a still greater lesson, that, in the heat of argument, in the thrust and parry of wordy warfare, never for a moment has any one forgotten the courtesy of debate or the dignity of this Council. It is, therefore, with much regret that we sever our connection with the first and last reformed Council of a Lieutenant Governor of Bengal, and we do so with every good wish for your Honour's continued welfare, and I have personally to express the deep satisfaction of the mercantile community that your Honour will remain at the right hand of our new Governor."

The Hon'ble MR. GOLAM HOSSEIN CASSIM ARIFF said:—

"Your Honour, as this is the last day of this Council, I take this opportunity to thank your Honour and the official Members of this Council for the courtesy and kindness shown to us non-official Members, and for the facilities given to us in the discharge of our duties. We have been obliged to put questions in this Council, some of which may have caused inconvenience and trouble, but the official Members have in many instances redressed the grievances, as far as practicable, referred to in those questions.

"We are parting to meet no more in this Council. We hope the different parts of the province about to be separated and constituted into independent provinces will go on prospering with the passing years; and though some of us are sorry for the separation, none of us will, I hope, have cause for lasting regret.

"On behalf of Muhammadans of Bengal, and specially of Calcutta, whom I have the honour to represent, I beg to offer our thanks to your Honour for the assurance given to them concerning the protection of their shrines and places of worship in the course of the operations of the Calcutta Improvement Trust."

The Hon'ble MAHARAJA PRODYOT KUMAR TAGORE said:—

"Your Honour, I rise to associate myself with what has just fallen from my hon'ble friend the Maharajadhiraja Bahadur of Burdwan, and to add that we all gratefully appreciate the courtesy and kindly consideration which we have uniformly received at your Honour's hands since your Honour became the President of this Council. If the legislative machinery has worked smoothly, this gratifying result has been due largely to the tact, ability and impartiality which both your Honour's predecessor and yourself have shown in presiding over our deliberations. We cannot forget that, so far as this Council is concerned, there has never been any interference—direct or indirect, overt or covert—with the freedom of debate, and we non-official Members have been permitted to give expression to our views, our wants and wishes, without any check or hindrance whatsoever. We shall always remember that, if our views have not prevailed as often as we could have wished, they have, at any rate, always received the patient consideration of Government. No unseemly scene has chequered the even tenor of the proceedings of this Council, and the friendly and harmonious relations between the official and the non-official Members have never been ruffled. I can only hope that our successors may be no less fortunate than we have been."

[*Maharajadhiraja Bahadur of Burdwan; Mr. Norman McLeod.*]

The Hon'ble MAHARAJADHIRAJA BAHADUR OF BURDWAN said:—

"Your Honour, this is the last sitting of the Legislative Council of the last Lieutenant-Governor of Bengal, and it is not strange that, when we now take leave of you, sadness should creep into our speeches. Belvedere, which to many of us has been the haunt of many a pleasant, happy and instructive incident and association, will no longer be the residence of the Provincial Ruler. But I hope that this historical place will not be sold or utilized for any purpose not in keeping with its past dignity and traditions, and that, although we shall in the future have to go to Government House, or to some other Council chamber, for our "*Ayes*" and "*Noes*," as well as for paying our respects to our Ruler, we may, when we pass by Belvedere, at least feel this satisfaction, that it is being utilized for some noble purpose associated with Bengal.

"Your Honour, you will be relinquishing your high office very soon, but while we regret that fact, we rejoice to know that we shall still have you in our midst, and that you will be one of the three trusted advisers of our first Governor. It is befitting that our last Lieutenant-Governor should be a Bengal man, and one who, during a difficult time, has steered the barge of State in a manner well worthy of the traditions of the Bengal Civil Service, and I congratulate you, Sir William, very heartily on your success as our Ruler during the past nine months.

"The ship of the Nobleman who is to guide our destinies for the next five years will soon be leaving Madras for Calcutta, and I am sure I voice the opinion of one and all of the Bengal Members here in saying that we shall accord Lord Carmichael a hearty welcome to Calcutta. It is true that we feel Calcutta's dethronement from the Imperial standpoint, but we fervently hope and pray that, under the new state of things, under our first Governor and in our new Presidency, we shall be able to gather our forces together, and by a genuine *entente cordiale* between the Muhammadans and the Hindus, on the one hand, and the Rulers and the ruled, on the other, be able to maintain Calcutta's superiority and precedence over all other Provincial capitals.

"Now, a word of farewell to my Bihari and Uriya friends in this Council who will cease to represent Bengal from the 1st of April. We have been linked together for a long time past, and that is why we feel the parting so much. But as the new arrangements are expected to be conducive to the development of the newly created Province of Bihar and Orissa, I wish my Bihari and Uriya friends good luck and prosperity in their new environment."

The Hon'ble MR. NORMAN MCLEOD said:—

"Your Honour, may I be permitted to add a few words to what has been so well said by my hon'ble friend the Maharajadhiraja Bahadur of Burdwan? On behalf of the European non-official Members of this Council, I fully endorse the deserved tribute he has paid to your Honour's occupancy of the Presidential Chair. We have to thank you for your unfailing courtesy, your uniform fairness, and for your keen insight into all the questions that have come before us, as well as for the help you have given us in arriving at proper conclusions in our deliberations. This Council, like several others, has been in the nature of an experiment, but I don't think it can be denied that, with ripened experience, it, and similar Councils, must prove to be of the greatest assistance in the proper administration of our great Empire. During the time we have been in existence we have learnt many and instructive lessons. I have always heard that words were given to us to express our thoughts. We have, however, here learnt that such is not the case; for we have often, in weariness of the flesh, listened for hours to speeches which have conveyed but few thoughts. This is a matter which ought to engage attention in framing the rules for the new

* In view of the fact that the territorial changes announced by His Imperial Majesty at the Delhi Durbar on 12th December, 1911, were to take effect from the 1st April, 1912, this was the last meeting of the Council under its old constitution.

[*Khan Bahadur Maulvi Sarfaraz Hussain Khan; Mr. M. S. Das; Babu Bhupendra Nath Basu.*]

The Hon'ble KHAN BAHADUR MAULVI SARFARAZ HUSSAIN KHAN said :—

"Your Honour, we, the Bihari Members of this Council, representing the different constituencies of Bihar, express to your Honour, at this time of separation, one heartfelt thanks for your invariable courtesy, kindness, and kindly guidance. We are none the less thankful to the official Members for their having given a patient hearing to us, and for their sympathy with the Orissa people. Your Honour, although we are now separating, we assure our Bengali friends that we are separating with a heavy heart, and with the painful feeling of losing the co-operation of the most advanced community of India —I mean the Bengali community."

The Hon'ble MR. DAS said :—

"Your Honour, I do not know whether any Hon'ble Member present here to-day has been elected to this Council as often as I have been. We are just now at a very significant moment in the history of this Council. Hon'ble Members have, to use the expression of the Hon'ble Mr. McPherson, given and received hard knocks, but we have always felt that, collectively as a corporate body, we were a force, a political force, a legislative force, with the President as our leader and captain. We are just at the moment when that force will be, for the time being, disbanded. Naturally, there is a feeling amongst us which can better be realised than expressed. The Hon'ble Maharajadhiraja Bahadur of Burdwan, in referring to the administrative changes which have been introduced, expressed his good wishes towards the people of Orissa and Bihar. I am personally very thankful for that expression of good will. If the Maharaja will accept it, I would offer him, in my representative capacity, the gratitude of the people whom I represent. As regards the expressions of gratitude and grateful appreciation of the virtues of our President, I beg to associate myself with these with the greatest pleasure. Whether the administrative change which has brought about the present severance will be good or not for Orissa is a question which only prophets can answer, but the record of this Council and of Orissa's connection with this Council is a matter of history,—at least will be a matter of history two or three days hence; and history, Sir, stands on a much firmer basis than prophecy. I am especially thankful to your Honour for the remarks which went to show the interest you have always taken in the people of Orissa during the time you have been at the head of the divisional administration there. Before we part, let me assure you, Sir, on behalf of the people of Orissa, that the people of Orissa will always watch your career with interest, and always entertain a hope, and join in the prayer, that you may enjoy still higher honours and occupy higher offices, and be a source of good to the people among whom you may live. The people of Orissa will always call you, as they have hitherto called you, 'Duke of Orissa,' though the people of Bengal may call you 'Sir William Duke'; and Orissa, though severed from Bengal, will have this satisfaction, that the experience, which your Honour has gained in Orissa, has been placed at the service of Bengal. Orissa has also been useful to Bengal in other ways, having contributed to some extent to the experience which an officer like Mr. Maddox now possesses in the high office which he occupies. I wish to express Orissa's kindly feelings towards this Council, towards Bengal and also towards Your Honour personally."

The Hon'ble BABU BHUPENDRA NATH BASU said :—

"May it please your Honour, I shall detain the Council but for a few minutes. My position in this Council has been a position of some difficulty, for, in default of a constituency, I came here by the grace of your Honour's Government; but I break no confidence when I say that I came with your Honour's personal assurance that there should be no restraint upon my liberty of action. Therefore, as one of the Members of your Honour's Council, I am under a peculiar obligation to your Honour. I quite appreciate the discharge of our difficult duties as Members of this Council.

We have at times offended certain susceptibilities, and sometimes, I am afraid, raised up prejudices against ourselves; but so far as we are concerned, we have tried to discharge our duties honestly and to the best of our light; that light probably has not always been quite so bright as it might have been. My friend, the Hon'ble Mr. MacLeod, has made a novel statement which I have heard for the first time in my life namely, that speech was intended to express one's thoughts. I was always under the impression, and it has been said by a very high European authority, that speech was made to conceal one's thoughts. I am glad to have a contradiction from my friend. In making that observation, I do not mean to say that, so far as we are concerned, we did not try to make ourselves understood; but I am afraid, from the tenor of the observations which my honourable friend has made to-day, that we at times failed to make ourselves understood. Whether it was our fault or the fault of somebody else, that is a question which others must decide. But on an occasion like this, I do not desire to refer to matters controversial. My friends from Bihar and Orissa have expressed their regret in parting from us, but that regret cannot be so keen as ours is. The people of Bengal have been in association with them for 150 years or more One of my friends from Bihar has said that it was an overgrown family, and that it was desirable that we should part and break up. I accept that position; it is better for us to part in peace than in anger, though we part in sorrow. All that I do hope and pray for is that Bihar and Orissa may be as great as they desire to be, and that they may say hereafter that their association with Bengal conduced, in some degree at least, to the position that they may attain in future years; for whatever may have been our failings—and I as a Bengali do not seek to minimise them,—it is undeniable that we Bengalis have a passionate fondness for our country, which exercises over us a degree of fascination which probably is unknown to the rest of India. If that passionate fondness also actuates my friends from Bihar and Orissa, I shall be very glad indeed. People have found fault with our devotion to our mother-land, and for our provincialism, as they have been pleased to call it. I shall be glad if that trait developes in our friends of the old province. We part with them in sorrow; and not only is it that we part in sorrow from our friends of Bihar and Orissa, but there are many "official" faces around us in this chamber whom we shall miss in a short time. So far as we people of Bengal are concerned, we can assure those Hon'ble official Members that we part from them as we would part from dear and well-beloved brothers. For I tell you, Sir, from my place in this Council, that whatever may have been the differences between ourselves and the Members of your honourable and distinguished service, we have always recognized in them a high sense of duty and a keen and lofty desire to do good to the people amongst whom they are placed to serve, and in parting from them we part in genuine sorrow. We wish them all prosperity and happiness in future, and we pray that, when they go away from my province, they may have elsewhere the same affection, the same consideration, the same regard and the same devotion that they have enjoyed in my province."

The PRESIDENT said :—

"I will not prolong these painful farewells, because they *are* painful; but the occasion is undoubtedly one which calls for some remarks, inasmuch as two things, one of them very young and one of them very old, are about to disappear together. The young one is our Council in its present form, which has lasted for little more than two years, and in a few days will dissolve. The other is the historic connection between Bengal, Bihar and Orissa, which has now lasted, under the British Government, for over a century and a half, without counting the long period preceding, when these provinces were most often united under the same Muhammadan Government. The Bengal Council will rise, like the Phœnix, from its ashes, and we need not spend too much grief upon it. But of the work of this Council, which is so soon to be dissolved, I should like to say a few words. It is now two years or more since it came into existence, and we have gained very much from

its being a Council for the United Provinces of Bengal, Bihar and Orissa, from our having a large number of members from all portions of these Provinces, and from our thus having learnt to consider many questions from many different points of view. The debates have, I am certain, in that respect, been more interesting than they could have been in the Council of a Province which was entirely homogeneous. That advantage we shall lose for the future, and we say good-bye with regret to the representatives of Bihar and Orissa—a regret which is qualified by the fact that we know that they believe that the separation is for their own good and, in many ways, for their advancement. It is undoubtedly well for them that, in the past, they have been connected with Bengal and that they shared the same advantages. That connection has certainly been a great advantage to them, though it may well be that the time has now come when it is best for them to stand by themselves and to make their way by their own efforts. There is one consolation, at any rate, to us of Bengal, as about to be reconstituted, which perhaps has attracted too little notice hitherto, and that is that we shall now recover a certain provincial precedence and importance, of which we had hitherto been deprived, not from any fault of our own, nor from any fault of Bengal, but, on the contrary, from the great increase in its importance and progress, which resulted curiously in the Imperial altogether overshadowing the Provincial aspect, and in the Province taking a lower place than it might have otherwise claimed. I refer to the constitutional or historical aspect. From the commencement of the Dewani in 1765, and up to 1774, there were Governors of Bengal, with Councils of their own, who exercised a somewhat vague and indefinite supremacy over the other Presidencies. From 1774, under an Act of the previous year, the Governors became Governors-General of Fort William in Bengal, and so continued for 60 years. During this period the supremacy of Bengal was unquestioned, for we find that the whole of the present Empire of British India (excepting the two sister Presidencies), as it was added to from time to time and consolidated with our earlier possessions, was incorporated in the Presidency of Fort William. From 1834 to 1854 the Governors-General were no longer the Governors-General of Fort William but Governors-General of India, while, nevertheless, they continued to be Governors of Bengal. Then came the famous Act* of 1853, by which power was taken to appoint a Governor over the Presidency of Bengal—a power, however, which has not been put in operation until after the lapse of 59 years;—but instead, under the alternative provision, a Lieutenant-Governor was appointed, and for these 59 years the Province has been administered by a series of Lieutenant-Governors of whom I have the honour to be the last. In that way the Province of Bengal, in a certain sense, undoubtedly lost supremacy, and fell from a position which before it had undisputedly enjoyed. At the end of the 18th century that position was unchallenged, seeing that the Governor-General was himself the Governor of the Province; but when the time came that the Governor-General ceased to be Governor of Bengal and the Province passed under the administration of a Lieutenant-Governor, it fell from the rank of a "Presidency" to that of one of the "Provinces" of India, like the old North-West Provinces, now the United Provinces, or the Punjab. One immediate and obvious advantage which we shall derive from the changes which are now so imminent, is that the Province of Bengal will recover that precedence and position which it enjoyed 100 years ago, and I trust that the knowledge of that fact will inspire us, when we come together again in the reconstituted Bengal Council, to do our duty manfully in the hope and confidence of establishing our Province as once again the premier Presidency of India."

The Council was then adjourned.

A. W. WATSON,

Offg. Secretary, Bengal Legislative Council.

CALCUTTA,

The 30th March 1912.

* The Government of India Act, 1853 (16 & 17 Vict., c. 95).

B. S. Press—17-5-1912—399J—450—B. B. S.